No. 83-2129 (4)

Office Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

BARBARA R. SCHREIBER,

Petitioner,

— against —

BURLINGTON NORTHERN, INC., R-H HOLDINGS CORPORATION, THE EL PASO COMPANY, TRAVIS HUBERT PETTY, WILLIAM V. HOLIK, JR., M.R. ENGLER, JR., W.C. HENDERSON, R.S. MORRIS, M.A. EHRLICK, A.M. DERRICK, RICHARD L. McCONN, D.J. MacIVER, JR., L.M. VAREN KAMP, HOWARD BOYD, WILLARD F. ROCKWELL, JR., W.D. NOEL, L. EMORY KATZENBACH, BEN F. LOVE, KENNETH RUSH, and J.R. HUBBARD,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JOINT APPENDIX

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For further appearances see reverse side of cover

PETITION FOR CERTIORARI FILED JUNE 26, 1984
CERTIORARI GRANTED OCTOBER 1, 1984

250 PP

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Individual Respondents

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RELEVANT DOCKET ENTRIES
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

January 12, 1983 - Filed Complaint and issued summons

February 14, 1983 - Filed Second Amended Class Action Complaint

February 14, 1983 - Filed Motion to Dismiss by Defendants Burlington Northern, Inc. and R-H Holdings Corporation

February 14, 1983 - Filed Motion to Dismiss by Defendant The El Paso Company and the Individual Defendants

June 27, 1983 - Filed Opinion, Latchum, J.

June 27, 1983 - Filed Order, Latchum, J.
Second Amended Complaint dismissed

July 12, 1983 - Filed Notice of Appeal

RELEVANT DOCKET ENTRIES

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

February 28, 1984 - Argument heard (by Adams, Sloviter, C.J. & Teitelbaum, D.J.)

April 2, 1984 - Judgment affirmed.

April 24, 1984 - Mandate issued.

October 3, 1984 - Filed certified copy of Order from United States Supreme Court granting Writ of Certiorari.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

BARBARA SCHREIBER, Plaintiff, v. BURLINGTON NORTHERN INC.) R-H HOLDINGS CORPORATION) THE EL PASO COMPANY, TRAVIS HUBERT PETTY, WILLIAM V. HOLIK, JR., R.S. MORRIS, HOWARD BOYD, WILLARD F. ROCKWELL, JR., W.D. NOEL, L.EMORY KATZ-ENBACH, BEN F. LOVE, KENNETH RUSH, and J.R. HUBBARD, Defendants.	)	C. A. No. 83-13 PLAINTIFF DEMANDS A TRIAL BY JURY

SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiff, by her attorneys Wilson & Whittington, P.A. for her Second Amended Complaint against defendants, alleges as follows:

1. This Court's jurisdiction is based on Section 27 of the Securities Exchange Act of 1934, 15 U.S.C. §78aa

("Act"), as amended and the principles of pendant jurisdiction.

2. The claims alleged herein arise under Section 14(e) of the Act, the Rules and Regulations of the Securities and Exchange Commission promulgated thereunder and the principles of common law.

3. Some of the defendants reside, are found and or transact business in the District of Delaware.

4. Some of the acts and transactions herein alleged to constitute the violations of the Act and the common law occurred within the District of Delaware, including the negotiations and other acts and transactions described hereinbelow. In connection therewith, defendants used, directly and indirectly, the means and instrumentalities of interstate commerce, the United States mails and the facilities of national securities exchanges and markets.

5. Plaintiff, a shareholder of defendant The El Paso Company ("El Paso") since 1976, tendered her shares in accordance with a tender offer promulgated by defendants Burlington Northern,

Inc. ("Burlington") and its wholly owned subsidiary R-H Holdings Corporation ("R-H"), dated December 21, 1982 ("December offer").

6. Defendant El Paso is, and throughout the times hereinafter alleged was, a corporation organized and existing under the laws of the State of Delaware, engaged in the business of being a diversified energy company. Its stock is actively traded on the New York Stock Exchange.

7. Defendant Burlington is, and throughout the times hereinafter alleged was, a corporation duly organized and existing under the laws of the State of Delaware, engaged in the business activities of transportation and natural resources.

8. Defendant R-H is, and throughout the times hereinafer alleged was, a corporation duly organized and existing under the laws of the State of Delaware and is a wholly owned subsidiary of defendant Burlington.

9. The individual defendants are the directors of El Paso, with some of

them owning substantial stock interests therein, and defendants Petty, Holik, and Morris are chairman of its board of directors, president, and executive vice-presidents, respectively. As such officers, directors and stockholders, they owe fiduciary duties and obligations to El Paso's public shareholders.

CLASS ACTION ALLEGATIONS

10. Plaintiff brings this action on behalf of herself and, pursuant to Rule 23 of the Federeal Rules of Civil Procedure, on behalf of all other shareholders of El Paso who tendered their shares to defendants Burlington and R-H pursuant to the December offer, the amount of such tendered shares totalling 25,100,000 shares, and as a result of the cancellation of the December offer are damaged thereby. All such persons, including plaintiff, shall be referred to hereinafter, as the "class".

11. Excluded from the class are the individual defendants and the other defendants and members of their immediate families and officers and directors thereof who may have purchased securities

[of] El Paso and are subject to or tendered their shares to defendants Burlington and R-H.

12. The members of the class exceed several thousand since the December offer resulted in 25,100,000 shares of El Paso stock being tendered before its cancellation and the new revised tender offer described below will only seek 21,000,000, shares to be tendered, thus the proration results in damages to the shareholders who tendered 25,100,000 shares. Joinder is therefore impracticable. The precise number of class members and their addressess (sic) are readily determinable in the books and records of El Paso, brokerage firms or those of their agents.

13. Plaintiff tendered her shares of El Paso on December 29, 1982 in accordance with the December offer. She is commited (sic) to pursuing this action and has retained counsel experienced in actions of this nature. Accordingly, plaintiff is an adequate representative of the class and has the same interest as all the members of the class. Her claims

are typical of the claims of class members, and she will fairly and adequately protect the members of the class.

14. An action under Rule 23 of the Federal Rules of Civil Procedure is superior to other available methods for the fair and efficient adjudication of this controversy, since the class is numerous and its membership so wide spread that joinder of all members is impracticable. Furthermore, as individual damages of any one class member may be relatively small, the expense and burden of non-litigation may well be unjustifiable for persons seeking to recover their individual damages. Plaintiff does not anticipate any difficulty in the management of this suit as a class action.

15. The questions of law or fact common to the class and which predominate over individual questions, include:

(a) whether the Act was violated by [any] of [the] defendants;

(b) whether Burlington and R-H breached their contracts with plaintiff and the members of the class who tendered

their shares pursuant to the December offer;

(c) whether defendant El Paso and the individual defendants interfered with the contractual arrangements between plaintiff and members of the class to cause cancellation of the December offer and substitution of a new tender offer;

(d) whether the substituted new tender offer contains omissions and misrepresentations with respect to the tender offer;

(e) whether certain contractual arrangements entered into by defendants Petty, Holik, and Morris with El Paso were breaches of fiduciary duty;

(f) the extent of damages sustained by plaintiff and members of the class and the appropriate mode and measure of damages and other relief.

SUBSTANTIVE ALLEGATIONS

16. In or about November and December 1982, defendant Burlington through a wholly owned subsidiary acquired 537,800 shares of El Paso stock on the open market. Thereafter, on or about December 20, 1982, the chief executive

officer of defendant Burlington contacted defendant El Paso and informed said defendant that Burlington wished to make a tender offer for 51% of El Paso's common stock at $24 net per share in cash.

17. Thereafter, on December 21, 1982, the December offer was submitted to the El Paso shareholders seeking to acquire 25,100,000 shares at $24 net per share in cash. The actual acquisition was to be made by defendant R-H, a wholly owned subsidiary of defendant Burlington, which had been organized specifically for the purpose of the tender offer and to make the acquisition thereunder. If all 25,100,000 shares had tendered, defendants Burlington and R-H would own approximately 51.8% of the outstanding stock of El Paso.

18. Thereafter, plaintiff tendered her shares in accordance with the terms [of] the December offer, as did the other members of the class. Defendant Burlington and its wholly owned subsidary (sic) R-H received tenders for 25,100,000 shares in accordance with the terms of the tender offer.

19. Under said terms, defendant Burlington became obligated to pay for said shares the cash sum of $24 net per share.

20. The aforesaid tender offer provided a number of conditions ("outs") under which Burlington could cancel the tender offer. None of those outs became applicable and none of the events foreseen in said "outs" ever occurred.

21. Instead, defendant El Paso attempted to counter the tender offer by purporting to issue shares of preferred stock. This attempted issuance became the subject of bitter litigation between defendants Burlington and El Paso before the Chancery Court, New Castle County, Delaware. Defendant Burlington contended, inter alia, that the aforesaid issuance or proposed issuance of preferred stock was illegal. When it became apparent that said position would be sustained by the Court and an injunction would issue, defendant El Paso entered into negotiations with defendants Burlington and R-H with a view to ending the dispute between the parties.

22. As part of the negotiations, defendants Petty, Holik, and Morris entered into special agreements ("Golden Parachutes") with El Paso to provide for these defendants to receive extended employment benefits in the event El Paso should be taken over, which benefits would give them millions of dollars of extra compensation. In addition, the individual defendants wished to insure that they would be in a position to tender their El Paso stock to Burlington, which they had not done in connection with the December offer.

23. Accordingly, the parties resolved the litigation and their disputes on or about January 10, 1983 on the following terms:

(a) Defendants Burlington and R-H would rescind and cancel the December offer and instead, would tender a new offer ("January offer") seeking to acquire only 21,000,000 shares of El Paso stock at $24 cash net per share and would purchase an additional 4,166,667 shares directly from El Paso also at $24 net per share. In addition, Burlington was

granted an option to purchase and (sic) additional 4,950,000 common shares of El Paso at $24 per share.

(b) Burlington and R-H would recognize the "Golden Parachutes" of defendants Petty, Holik, and Morris and by their January offer enable the individual defendants to tender their El Paso shares to Burlington, which had not been tendered pursuant to the December offer.

24. Thereafter, defendants caused the January offer to be submitted to the shareholders of El Paso. Said tender offer called for a tender of only 21,000,000 shares at a price of $24 per share.

25. The aforesaid conduct and new tender offer violated Section 14(e) of the Act, the applicable Rules and Regulations of the Securities and Exchange Commissions and the principles of common law in the following respects:

(a) The improper termination and withdrawal of the tender offer constituted a willful breach of the tender offer agreements entered into pursuant to the December offer between plaintiff and

the other members of the class and defendants Burlington and R-H and have caused loss and damage to the tendering plaintiff and class members in that they have been denied their contractual right to receive $24 per share net cash for each of their El Paso shares and said damage has occurred by reason of the conduct of defendants Burlington and R-H, as well as the wrongful interference by defendant El Paso and the individual defendants in said contractual arrangements.

(b) The January offer omits to inform the shareholders of El Paso of the Golden Parachutes granted by El Paso to defendants Petty, Holik, and Morris and that the individual defendant directors caused a cancellation of the prior tender offer to enable a tender of their own shares and was not for the benefit of the public shareholders of El Paso.

26. As a result of the foregoing, all those who tendered their shares in response to the December offer will not receive payments in accordance with its terms. Instead, they will have to tender their shares anew and be subject to an

extensive proration. Thus, they have sustained losses.

27. As a result of the foregoing, plaintiff and the other members of the class were deprived of the benefit of the $24 per share acquisition price originally proposed by defendants Burlington and R-H, loss and were further damaged by being deprived of the use of their El Paso shares and interest thereon, and were damaged accordingly while defendants have profitted thereby.

WHEREFORE, plaintiff demands judgment against defendants, and each of them as follows:

1. Determining that this action is a proper class action maintainable pursuant to Rule 23 of the Federal Rules of Civil Procedure;

2. Awarding plaintiff and each other members of the class herein damages for the wrongs complained of herein, together with appropriate interest;

3. Awarding plaintiff and each other member of the class herein defined their cost and disbursements of this action, including the reasonable fees of

plaintiff's attorneys, accountants and experts; and

4. Awarding plaintiff and each other member of the class such other and further relief as may be just and proper under the circumstances.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BARBARA SCHREIBER,	§	
	§	
Plaintiff,	§	Civil Action No.
	§	83-13
v.	§	
	§	
BURLINGTON NORTHERN,	§	
INC., et al.	§	
	§	
Defendants.	§	

MOTION TO DISMISS

Defendants Burlington Northern, Inc. and R-H Holdings Corporation hereby move this Court for an Order pursuant to Rule 12(b)(6), F.R.C.P., dismissing this action for failure to state a claim upon which relief can be granted.

MORRIS, NICHOLS, ARSHT & TUNNELL

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BARBARA SCHREIBER,	§	
	§	
Plaintiff,	§	C.A. No. 83-13
	§	
v.	§	
	§	
BURLINGTON NORTHERN,	§	
INC., et al.	§	
	§	
Defendants.	§	

MOTION TO DISMISS

Defendants The El Paso Company and all of the individual defendants hereby move this Court for an Order pursuant to Rule 12(b)(6), F.R.C.P., dismissing this action on the ground that the Second Amended Class Action Complaint fails to state a claim upon which relief can be granted.

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Dated: February 14, 1983

IN THE UNITED STATES COURT
FOR THE DISTRICT OF DELAWARE

BARBARA SCHREIBER, Plaintiff,	)	
v.	)	Civil Action No. 83-13
BURLINGTON NORTHERN INC., R-H HOLDINGS CORPORATION, THE EL PASO COMPANY, TRAVIS HUBERT PETTY, WILLIAM V. HOLIK, JR., M. R. ENGLER, JR., W.G. HENDERSON, R. S. MORRIS, M. A. EHRILICH, A.M. DERRICK, RICHARD L. McCONN, D.J. MacIVER, JR., and L. M. VAREN KAMP, Defendants.	)	

Thomas D. Whittington, Jr. and Judith N. Renzulli of Wilson, Whittington & Aulgur, Wilmington, Del., Irving Bizar of Pincus Ohrenstein Bizar D'Alessandro & Solomon, New York, N.Y., of counsel, for plaintiff.

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OPINION

Wilmington, Delaware
June 27, 1983

LATCHUM, Chief Judge.

The term "manipulation" as used in Section 14(e) of the Williams Act, 15 U.S.C. §78n(e), has defied precise definition. The Act itself does not delineate its scope nor has the Securities and Exchange Commission ("SEC") prescribed its exact meaning in its rules and regulations. Thus, the federal courts have been left to give meaning to the term on a case-by-case basis. A number of decisions, in an effort to explain its meaning within the context of the statute, have focused on the particular fact situations to which plaintiffs have sought to apply the Act. This Court must similarly approach the problem in the limited context of determining whether the alleged breach and withdrawal of a proposed tender offer constitutes a Section 14(e) manipulative violation.

Presently before the Court are defendants' motions to dismiss the amended complaint brought under Section 14(e) by the plaintiff, Barbara Schneider [sic], an El Paso Gas Company ("El Paso") stockholder. Plaintiff brings

this action seeking damages on her own behalf and on behalf of all other El Paso shareholders similarly situated against El Paso, El Paso's directors, Burlington Northern, Inc. ("Burlington"), and R-H Holdings Corporation ("R-H"), a wholly owned Burlington subsidiary.

FACTS

For the purposes of the present motions to dismiss, the Court must accept the allegations of the amended complaint as true. The allegations of the complaint may be summarized as follows: By December, 1982, R-H had acquired 537,800 of El Paso's shares in the open market. R-H then decided to make a tender offer for 25.1 million shares of El Paso, which constituted 51% of El Paso's common stock. On December 20, 1982, Burlington's chief executive officer informed El Paso's directors of its impending tender offer.

On December 21, 1982, R-H made its tender offer (the "December tender offer") for 25.1 million shares at $24 per share. The offer provided certain

"outs" for R-H by which it could terminate the offer:

> Notwithstanding any other provision of the Offer, the Purchaser shall not be required to accept for payment or pay for tendered Shares, or may terminate or amend the Offer ... if, at any time on or after December 17, 1982 and prior to the acceptance for payment of any such Shares ..., any of the following shall occur: ... if, in the sole judgment of the Purchaser, in any such case, regardless of the circumstance (including any action or inaction by the Purchaser) giving rise to any such condition, such condition makes it inadvisable to proceed with the Offer and/or with such purchase or payment.

(Docket Item ["D.I."] 24, at 4-5.)

On December 29, 1982, the plaintiff tendered her El Paso shares in response to the December offer and later that tender offer was fully subscribed. At first, El Paso's management decided to resist the December tender offer and began a number of defensive moves: it sued Burlington in the Delaware Court of Chancery and in the U.S. District Court for the Northern District of Texas; it

filed a Schedule 14D-9 with the SEC in which it threatened to dispose of its assets; it also announced the issuance of a new class of preferred stock[1] and amended its by-laws.

Thereafter, El Paso and Burlington entered into negotiations. As part of the negotiations, plaintiff alleges that the defendant directors of El Paso entered into special agreements with El Paso to provide them with "golden parachutes" in the form of extended employee benefits, allegedly worth millions of dollars, in the event El Paso should be taken over.

On January 10, 1983, the parties resolved this dispute and agreed to the following:

> (a) Defendants Burlington and R-H would rescind and cancel the December offer and instead, would tender a new offer ("January offer") seeking to acquire only 21,000,000 shares of El Paso stock at $24 cash net per share and would purchase an

---

[1] El Paso accomplished the issuance of a new class of preferred stock by "issuing a dividend upon its common

> additional 4,166,667 shares directly from El Paso also at $24 net per share. In addition, Burlington was granted an option to purchase an additional 1,950,000 common shares of El Paso at $24 per share.
>
> (b) Burlington and R-H would recognize the "Golden Parachutes" of defendants Petty, Holik, Engler and Henderson and by their January Offer enable the individual defendants to tender their El Paso shares to Burlington, which had not been tendered pursuant to the December offer.

(D.I. 5, at 7-8.) The following day R-H commenced its second or January tender offer which sought only 21 million shares at the same $24 per share price. On February 8, 1983, R-H accepted 21 million shares for payment after more than 40 million shares had been tendered.

Thereafter, the plaintiff commenced this action alleging that defendants' conduct violated Section 14(e) of the Williams Act in the following manner:

(Footnote continued from previous page)
stock, ... which had rights designed to inhibit business combinations and to change existing voting rights of El Paso's common stockholders." (D.I. 27, at 4.)

(a) The improper termination and withdrawal of the tender offer constituted a willful breach of the tender offer agreements entered into pursuant to the December offer between plaintiff and the other members of the class and defendants Burlington R-H and have caused loss and damage to the tendering plaintiff and class members in they they [sic] have been denied their contractual right to receive $24 per share net cash for each of their El Paso shares and said damage has occurred by reason of the conduct of defendants Burlington and R-H, as well as the wrongful interference by defendant El Paso and the individual defendants in said contractual arrangements.

(b) The January offer omits to inform the shareholders of El Paso of the Golden Parachutes granted by El Paso to defendants Petty, Holik, Engler and Henderson and that the individual defendant directors caused a cancellation of the prior tender offer to enable a tender of their own shares and was not for the benefit of the public shareholders of El Paso.

(D.I. 5, at 8-9.)[2]

Thus, plaintiff alleges that as a result of this activity she and the class members were damaged because they were deprived of the December tender offer price of $24 per share. Moreover, plaintiff contends that since she and the class members are required to retender their shares along with all other El Paso shareholders in the January offer, their shares which had been fully tendered in the December offer are now subject to extensive proration. Plaintiff therefore seeks damages for the alleged Section 14(e) violations and has moved the Court to certify this litigation as a class

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2 There are also currently pending in the Delaware Court of Chancery three actions: Breitman v. Burlington Northern, Inc. C.A. No. 7075 (filed Jan. 19, 1983); Steiner v. Burlington Northern, Inc., C.A. No. 7079 (filed Jan. 17, 1983). The Gilbert case has been certified to proceed as a class action. (D.I. 24A, Ex. D.) These cases raise the issues of breach of contract, breach of fiduciary duties, tortious interference with contract and conspiracy. (D.I. 24A, Ex. A-D.)

action encompassing all El Paso shareholders who tendered their shares in response to the December offer. As previously indicated, all of the defendants have moved to dismiss the amended complaint under Fed.R.Civ.P. 12(b)(6). Specifically, defendants contend that the amended complaint fails to state a claim upon which relief can be granted because the willful breach of a tender offer contract or a tortious interference with such a contract are not violations of Section 14(e). In addition, defendants argue that the failure to disclose that El Paso granted "golden parachutes" to its directors and that these directors breached their fiduciary duties by causing the termination of the December tender offer are also not Section 14(e) violations because the failure to disclose a breach of fiduciary duty in tender offer materials is not a William Act violation.

The plaintiff counters by arguing that defendants' activity in terminating the December tender offer and initiating the January tender offer constituted a

manipulative practice in violation of Section 14(e) and relies upon the Sixth Circuit's recent decision in Mobil Corp. v. Marathon Oil Corp., 669 F.2d 366 (6th Cir. 1981), in support of that argument. The nondisclosure claims, plaintiff contends, are sufficiently pled to withstand a dismissal motion.

DISCUSSION

A. Manipulation Claim

The first question is whether the termination of the Decedmber tender offer and the initiation of the January tender offer amounted to manipulation within the meaning of that term in Section 14(e). We begin the analysis with the understanding that the basic purpose of the federal securities laws is to require "adequate disclosure." This concept had its origin in the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., which was passed in response to the abuses that led to the 1929 stock market crash. As envisaged by Congress, the purpose of the securities laws was to ensure that potential investors would have available

to them sufficient information to enable them to make a reasoned decision as to whether or not to engage in a particular securities transaction. Indeed, President Roosevelt wrote Congress during consideration of the Securities Exchange Act of 1934:

> There remains the fact, however, that outside the field of legitimate investment, naked speculation has been made far too alluring and far to easy for those who could and for those who could not afford to gamble.
>
> Such speculation has run the scale from the individual who has risked his pay envelop or his meager savings on a margin transaction involving stock with whose true value he was totally unfamiliar, to the pool of individuals or corporations with large resources, often not their own, which sought by manipulation to raise or depress market quotations far out of line with reason, all of this resulting in loss to the average investor, who is of necessity personally uninformed.

Letter of President Franklin D. Roosevelt, S. Rep. No. 792, 73d Cong., 2d Sess. 1-2 (1934).

Furthermore, encompassed with the concept of adequate disclosure was the belief that an investor should be protected from those who might deceive or manipulate; the fear being that clandestine activity would improperly influence the investor or the market in general. In this respect, the Fletcher Report of the Senate Banking and Currency Committee noted: "The true function of an exchange is to maintain an open market for securities, whose supply and demand may freely meet at prices uninfluenced by manipualtion or control." Stock Exchange Practice, Report of Senate Banking and Currency Committee, S. Rep. No. 1455, 73d Cong., 2d Sess. 30 (1934). Thus, any manipulative activity that would interfere with the normal functioning of supply and demand would be prohibited by the Securities Exchange Act. Illustative of manipulative activity at the time of the Act's passage was the use of pools, whereby a group would secretly agree to actively trade in a single security so as to raise its price and then the pool members would unload the securities at a profit to the unsuspecting public. The

Fletcher Report pointed out that, "the activity fomented by a pool creates a false and deceptive appearance of genuine demand for the security on the part of the purchasing public and attracts persons relying upon this misleading appearance to make purchases." Id. at 32 (emphasis added).

The basic philosophy under the 1934 Act was carried forward in the enactment of the Williams Act. During consideration of this legislation, its sponsor, Senator Harrison Williams, stated that the Act "provides for full disclosure in cash tender offers," 113 Cong. Rec. 24664 (1967)(statement of Sen. Williams), and that "[t]hrough this legislation people will have more information, and will be able to intelligently decide whether to accept a tender offer and sell their shares to a group which may wish to obtain a controlling interest." Id. at 24665. In particular, Senator Williams stated:

> The essential problem in transfers of control resulting from cash tender offers or open market or privately negotiated purchases is that persons seeking control in these ways

> are able to operate in alomost [sic] complete secrecy concerning their intentions, their commitments and even their identities. Since the competence and integrity of management and controlling persons are of vital importance to stockholders, secrecy in this essential area is inconsistent with the disclosure pattern generally prevailing in the American securities markets.

Id. at 855.

Thus, the underlying purpose of the Williams Act is the adequate disclosure of information to the shareholder "so that they can make informed investment decisions on the basis of the same facts known by the person making the tender." Id.

Those cases that have examined the purpose of the Williams Act have reaffirmed consistently that it is principally a disclosure statute. See Dan River, Inc. v. Icahn, [current] Fed. Sec. L. Rep. (CCH) ¶ 99,043, at 94,961 (4th Cir. 1983); Panter v. Marshall Field & Co., 646 F.2d 271, 282-83 (7th Cir.), cert. denied, 454 U.S. 1092 (1981); Whittaker Corp. v. Edgar, 535 F.Supp. 933, 947 (N.D. Ill. 1982); Martin

Marietta Corp. v. Bendix Corp., 549 F.Supp. 623, 627-29 (D.Md. 1982); Oklahoma Publishing Co. v. Standard Metals Corp., 541 F.Supp. 1109, 1112-13 (W.D.Okla. 1982); Merritt v. Colonial Foods, Inc., 499 F.Supp. 910, 913-14 (D.Del. 1980); Berman v. Gerber Products Co., 454 F.Supp. 1310, 1318 (W.D.Mich. 1978); In re Sushine Mining Co. Securities Litigation, 496 F.Supp. 9, 11 (S.D.N.Y. 1977). In fact, the Supreme Court has stated that the Williams Act "was designed solely to get needed information to the investor...." Piper v. Chris-Craft Indus., Inc. 430 U.S. 1, 30-31 (1977). See Rondeau v. Mosinee Paper Corp., 442 U.S. 49, 58 (1975).

Now that this Court has determined that the Williams Act is essentially a disclosure statute, it becomes necessary to determine how the term "manipulation" fits within this context.

In Ernst & Ernst v. Hochfelder, 425 U.S. 185 (1976), the Supreme Court stated that manipulation is "intentional or willful conduct designed to deceive or defraud investors by controlling or artificially affecting the price of

securities." Id. at 199. Similalry, in Santa Fe Industries v. Green, 430 U.S. 462 (1977), the Court ruled that manipulation is activities "that are intended to mislead investors by artificially affecting market activity." Id. at 476.

Ernst & Ernst and Santa Fe both require an element of deception in order to be a manipulative violation. See Prentice, Target Board Abuse of Defensive Tactics: Can Federal Law Be Mobilized to Overcome the Business Judgment Rule?, 8 J. of Corp. Law 337, 354 (1983). The unfairness of a securities transaction, absent deception, the Santa Fe Court emphasized, is not the primary concern of the federal securities laws; rather, this is a concern of state law. 430 U.S. at 478-80.

Moreover, deception alone is not manipulation under Section 14(e). The manipulative activity must artificially affect the market price and do so in a misleading or deceptive manner. Manipulation essentially constitutes "artificial acts of stimulative trading designed to mislead investors into

believeing [sic] there was a heavy market demand for" the stock. Hundahl v. United Benefit Life Ins. Co., 465 F.Supp. 1349, 1363 (N.D.Tex. 1979).[3]

The fact, however, that a party's activity may affect market price cannot be the basis for a federal securities violation in the absence of deception. This was pointed out by Congress at the time the Securities Exchange Act was adopted:

> Any extensive purchases or sales are bound to cause changes in the market price of the security, but mere knowledge on the part of the purchaser or seller that his transaction will have this effect is not sufficient to bring him within the scope of this provision.

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3 Plaintiff has attempted to distinguish some of these cases by arguing that they are inapplicable because they are based on Rule 10b-5 instead of Section 14(e). This is a highly technical distinction. Except for the "in connection" requirement of Rule 10b-5, the two provisions are substantially the same. See, e.g., Smallwood v. Pearl Brewing Co., 489 F.2d 579, 605 (5th Cir.), cert. denied, 419 U.S. 873 (1974); Bucher v. Shumway, [1979-1980 Transfer Binder] Fed. Sec. L.

> Thus, if a person is merely trying to acquire a large block of stock for investment, or desires to dispose of a big holding, his knowledge that in doing so he will affect the market price does not suffice to make his actions unlawful.

S. Rep. No. 792, 73d Cong., 2d Sess. 17 (1934).

Thus, if the ordinary investor is able to reasonably point to a disclosed basis for the price change of a particular stock, there has not been manipulation under the Williams Act. It is when the activity in question is done in such a manner that the reason for the artificial change in price is undetectable by the ordinary investor that there is manipulation.

Applying the above analysis to the instant case, the Court finds that the

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(Footnote continued from previous page) Rep. (CCH) ¶ 97,142, at 96,299 (S.D.N.Y. 1979), aff'd, 622 F.2d 572 (2d Cir.), cert. denied, 449 U.S. 841 (1980). In re Sunshine Mining Co. Securities Litig., [1979-1980 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 97,217, at 96,635-36 (S.D.N.Y. 1979).

amended complaint fails to state a claim for manipulation under Section 14(e) of the Williams Act. While it is true that the defendants' activities with respect to the tender offer did influence the price of the stock, the amended complaint fails to allege any deception by the defendants. All activity of the defendants that could have conceivably affected the price of the El Paso shares was done openly. If the Court were to hold that defendants' actions in terminating the December tender offer and initiating the January tender offer constituted manipulation under Section 14(e), then potential offerors and managment of target companies would be subject to liability every time a tender offer is revised or negotiated. Some latitude must be given in the application of the Williams Act for it was designed to enhance market activity through open supply and demand, not artificially restrain it.

As noted at the outset, plaintiff relies upon Mobil Corp. v. Marathon Oil Corp., 669 F.2d 366 (6th Cir. 1981), to support its contention that the

activities complained of here amounted to manipulation. In that case, Marathon was the target of Mobil's unfriendly tender offer. In resisting the tender offer, Marathon entered into an agreement with U.S. Steel which granted the latter an option to purchase one of Marathon's most valuable assets in the event U.S. Steel was unable to effectuate a successful tender of its own for Marathon. Id. at 367-68. The Court of Appeals for the Sixth Circuit held that the "lock-up" option given to U.S. Steel constituted a manipulative practice because it foreclosed bidding for the acquisition of Marathon.

The plaintiff argues that the activities complained of here are of a similar nature and the reasoning of Mobil should be followed. This Court disagrees. The Mobil decision is not the law of this Circuit, and it also appears to be an aberration in this field of the law.[4] As the commentators contend, and

[4] Legal commentators have soundly criticized Mobil. See, e.g., Prentice, Target Board Abuse of Defensive Tactics: Can Federal Law Be Mobilized to Overcome the Business Judgment Rule?, 8 J. of

this Court agrees, the Mobil decision is inconsistent with the rationale of the Santa Fe case. An analysis of the Williams Act shows that a key ingredient of a manipulative practice is deception, the direct opposite of disclosure, which the Santa Fe Court clearly pointed out. As that Court stated, "it repeatedly ... has described the 'fundamental purpose' of the Act as implementing a 'philosophy of full disclosure'; once full and fair disclosure has occurred, the fairness of the transaction is at most a tangential concern of the statute." 430 U.S. at 477-78.

The allegedly manipulative activity of withdrawing the December tender offer in violation of alleged contractual

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(Footnote continued from previous page.) Corp. Law 337, 353-58; Profusek, Tender Offer Manipulation: Tactics and Strategies After Marathon, 36 Sw.L.J. 975, 991-95 (1982); Note, The Future of Lock-Ups After Mobil Corp. v. Marathon Oil, 27 St. Louis U.L.J. 261, 281-82 (1983); Note, "Lock-Up" Enjoined Under Section 14(e) of Securities Exchange Act, 12 Seton Hall L. Rev. 881, 891-95 (1982).

arrangements was disclosed to the shareholders and the general public. Because there was no deception practiced upon the shareholders in terminating their alleged contractual rights, there was no manipulative violation within the meaning of Section 14(e) and defendants' motion to dismiss the manipulative claim will be granted.

B. Nondisclosure Claim

Plaintiff's second claim is that the nondisclosure of El Paso's grant of "golden parachutes" to its directors and the fact that these directors caused the withdrawal of the December tender offer and the initiation of the January offer for their personal gain constituted as Section 14(e) violation. Defendants contend that this so-called nondisclosure claim should likewise be dismissed.

Generally, the Williams Act requires the tender offeror to disclose material information to the shareholders of the target company. This Court, however, need not decide whether the alleged omissions are material, but even if they are, they are completely unrelated to the

damages alleged. Plaintiff avers that her damage was a result of the withdrawal of the Decmember tender offer. But even if the alleged undisclosed facts had been transmitted to the El Paso shareholders, it would nave had no effect whatsoever upon the withdrawal of the December offer, because it was R-H's management and not El Paso's shareholders who withdrew the December offer.[5]

This action is analogous to two cases where plaintiffs alleged injury due to withdrawal of tender offers for their stock, Panter v. Marshall Field & Co., 646 F.2d 271 (7th Cir. 1981), and Lewis v. McGraw, 610 F.2d 192 (2d Cir.)(per curiam), cert. denied, 449 U.S. 951 (1980). In both cases, the plaintiffs sued under Section 14(e), contending that the tender offer materials contained misrepresentations. Both the Second and

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5 The defendants also argue that they properly disclosed this information and in any event they were under no obligation to do so. Because this Court has found sufficient grounds for dismissing this claim, it need not consider these arguments.

Seventh Circuits found in their respective cases that there was no Section 14(e) violation because the tender offers were withdrawn before the shareholders could rely upon them. Panter v. Marshall Field & Co., supra, 646 F.2d at 283-84; Lewis v. McGraw, supra, 619 F.2d at 195. Here the amended complaint fails to allege any causal nexus between the damage alleged by plaintiff -- that shareholders who tendered to the December offer could not fully participate in the January offer because of proration and were hence "deprived of the benefit of the $24 per share acquisition price originally proposed by defendants (D.I. 5, at 10) -- and the supposed omission of information in the January offer. Any failure to disclose the alleged breach of fiduciary duties by El Paso directors nad absolutely no relevance to plaintiff's alleged damanges. Consequently, the Court will dismiss plaintiff's so-called nondisclosure claim.

C. Pendent State Claims

Plaintiff's amended complaint vaguely asserts that defendants' conduct in

addition to violating Section 14(e) also violated "the principles of common law." Because this Court has dismissed the Williams Act claims, the only ones conferring subject matter jurisdiction upon the Court, the pendent state claims for breach of contract and breach of fiduciary duty will also be dismissed. The Supreme Court in United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966), instructed: "if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well." To the same effect are: Walck v. American Stock Exchange, Inc., 687 F.2d 778, 792 (3d Cir. 1982); Tully v. Mott Supermarkets, Inc., 540 F.2d 187, 195-96 (3d Cir. 1976).[6]

CONCLUSION

This case is the perfect example of a plaintiff, who may have nonfrivolous

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[6] Because the Court has dismissed all the claims in the amended complaint, there is no need to rule on plaintiff's motion for class certification.

claims based on state law for breach of contract, tortious interference with contract, breach of fiduciary duties and perhaps even conspiracy, attempting to characterize those state law claims as violations of the federal securities laws. This ploy, however, has been foreclosed since Santa Fe Industries, Inc. v. Green, 430 U.S. 462 (1977). In that case, the Supreme Court held that courts should be reluctant to federalize a substantial portion of corporate law traditionally left to state regulations. Accordingly, it will be the Delaware Chancery Court, in its pending action, which will appropriately decide those corporate law issues.

An order will be entered in accordance with this opinion.

IN THE UNITED STATES COURT
FOR THE DISTRICT OF DELAWARE

BARBARA SCHREIBER, Plaintiff, v. BURLINGTON NORTHERN INC.) R-H HOLDINGS CORPORATION) THE EL PASO COMPANY, TRAVIS HUBERT PETTY, WILLIAM V. HOLIK, JR., M. R. ENGLER, JR., W.G. HENDERSON, R. S. MORRIS M. A. EHRILICH, A.M. DERRICK, RICHARD L. McCONN, D.J. MacIVER, JR., and L. M. VAREN KAMP, Defendants.	)	Civil Action No. 83-13

ORDER

For the reasons set forth in the Court's Opinion entered in this case on this date, it is

ORDERED that the amended complaint is hereby dismissed.

Dated: June 27, 1983.

/s/
Chief Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

BARBARA SCHREIBER, Plaintiff, v. BURLINGTON NORTHERN INC.: R-H HOLDINGS CORPORATION: THE EL PASO COMPANY, TRAVIS HUBERT PETTY, WILLIAM V. HOLIK, JR., R.S. MORRIS, HOWARD BOYD, WILLARD F. ROCKWELL, JR., W.D. NOEL, L.EMORY KATZ- ENBACH, BEN F. LOVE, KENNETH RUSH, and J.R. HUBBARD, Defendants.	:	C. A. No. 83-13

NOTICE OF APPEAL

PLEASE TAKE NOTICE that plaintiff hereby appeals to the United States Court of Appeals for the Third Circuit from the Order of the United States District Court, District of Delaware, dated June 27, 1983, which dismissed her Complaint.

Dated: July 12, 1983

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PINCUS, OHRENSTEIN, BIZAR
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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 83-1504

BARBARA SCHREIBER,

Appellant

v.

BURLINGTON NORTHERN, INC., R-H HOLDINGS CORPORATION and THE EL PASO COMPANY, TRAVIS HUBERT PETTY, WILLIAM V. HOLIK, JR., M. R. ENGLER, JR., W. C. HENDERSON, R. S. MORRIS, M. A. EHRLICH, A. M. DERRICK, RICHARD L. McCONN, D. J. MacIVER, JR. and L. M. VAREN KAMP, HOWARD BOYD, WILLIARD F. ROCKWELL, JR., W. D. NOEL, L. EMORY KATZENBACH, BEN F. LOVE, KENNETH RUSH, J. R. HUBBARD

On Appeal from the United States
District Court for the
District of Delaware
(C. A. No. 83-13)

Argued February 28, 1984

Before: ADAMS, SLOVITER, *Circuit Judges*,
and TEITELBAUM, *District Judge*•

(Opinion Filed April 2, 1984)

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• Hon. Hubert I. Teitelbaum, United States District Court for the Western District of Pennsylvania, sitting by designation.

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Directors

OPINION OF THE COURT

ADAMS, *Circuit Judge.*

Barbara Schreiber, a shareholder of El Paso Gas Company (El Paso), brought this action under § 14(e) of the Securities Exchange Act of 1934, 15 U.S.C. § 78n(e) (1976) (the Williams Act) after she lost the opportunity to profit from a hostile tender offer by Burlington Northern, Inc. (Burlington)[1] when the offer was rescinded and a friendly but less lucrative offer was substituted. The district court dismissed her complaint, holding that she failed to state a claim for violation of § 14(e) because she alleged no injury resulting from deception. *Schreiber v. Burlington Northern, Inc.*, 568 F. Supp. 197, 201-04 (D. Del. 1983). While we are troubled by some of the conduct averred in the complaint, we agree with the district court that Schreiber's alleged injuries are not actionable under the Williams Act. Accordingly, we affirm.

I.

In late 1982, having purchased over one-half million shares of El Paso in the open market, Burlington decided to complete its takeover of El Paso by making a tender offer for 25.1 million shares at $24 per share (the December tender offer). Deeming the offer a hostile one, El Paso management countered with numerous defensive measures. But El Paso shareholders reacted favorably, fully subscribing to the offer by the December 30, 1982 deadline.

1. Burlington used a wholly owned subsidiary, R-H Holdings Corp., to execute the details of the takeover. In this opinion, Burlington and R-H will be referred to jointly as Burlington.

Burlington, however, never accepted those tendered shares. Instead, after negotiations with El Paso management, Burlington announced on January 10, 1983 the terms of a new and friendly takeover agreement. Pursuant to the new agreement, Burlington undertook to: (1) rescind the December tender offer; (2) substitute a new tender offer (the January tender offer) for only 21 million shares, at $24 per share; and (3) recognize "golden parachute"[2] contracts between El Paso and four of its officers. By February 8, more than 40 million shares were tendered in response to Burlington's January offer, and the take-over was completed.

For shareholders like Barbara Schreiber, who tendered in response to the December offer, Burlington's withdrawal of that offer proved costly. The January offer was greatly oversubscribed, and consequently those shareholders who re-tendered were subject to substantial proration. Seeking redress, Schreiber filed suit on behalf of herself and similarly situated shareholders, alleging that Burlington, El

2. So-called "golden parachutes" generally provide multi-year benefits to high level executives of a target company after a takeover if they are discharged without cause or downgraded by the new management. As described in the Schedule 14D-9 filed by El Paso with the Securities and Exchange Commission on January 12, 1983, the "employment agreements" with the four officers provided for their "continued employment with the Company in their current positions and at not less than their current salary levels" for periods of either three or five years. App. at S-29 to S-30. The Schedule 14D-9 also disclosed that El Paso's Deferred Compensation Plan had been amended "to provide that for the purposes of such Plan a participant shall be deemed to have retired at the instance of the Company if his duties as a director, officer or employee of the Company have been diminished or curtailed by the Company in any material respect." App. at S-29.

Paso, and members of the El Paso board violated § 14(e)'s prohibition of "fraudulent, deceptive, or manipulative acts or practices ... in connection with any tender offer." She claims that Burlington's willful breach of the December tender offer was a manipulative distortion of the market for El Paso stock. Schreiber also alleges that in the January offer Burlington failed to disclose the golden parachutes and the fact that El Paso management finally approved the takeover because of the favorable arrangements negotiated with Burlington. Plaintiff thus claims that this January nondisclosure was a deceptive act forbidden by § 14(e).

Ruling on defendants' motions under Fed. R. Civ. P. 12(b)(6), the district court held that neither of Schreiber's theories of recovery was legally sufficient and dismissed the suit on June 27, 1983. This appeal followed.

II.

Schreiber's first theory of recovery -- that Burlington engaged in manipulation when it cancelled the December tender offer -- seeks to convert an arguable breach of contract into a violation of the Williams Act. The district court rejected this effort, holding that § 14(e) proscribes only acts that artificially affect market price through deception.

The courts of appeals are divided as to whether deception is a necessary element of the manipulative acts prohibited by § 14(e). In the first appellate decision directly to address this point, the Sixth Circuit held in *Mobil Corp. v. Marathon Oil Co.*, 669 F.2d 366 (6th Cir. 1981), that an option granted by a target company to a friendly bidder in order to block a hostile takeover attempt -- a "lock-up" option -- is a manipulative act within the scope of § 14(e), despite the lack of any deception. Since *Mobil*, however, the

Second Circuit has twice rejected efforts by hostile bidders to use § 14(e) to attack arrangements similar to the lock-up option. *Data Probe Acquis'n. Corp. v. Datalab, Inc.*, 722 F.2d 1 (2d Cir. 1983); *Buffalo Forge Co. v. Ogden Corp.*, 717 F.2d 757 (2d Cir. 1983). Both *Data Probe* and *Buffalo Forge* hold that Williams Act manipulation must involve misrepresentation -- that is, the omission or misstatement of material facts.

We believe that the Second Circuit's position, requiring some form of misrepresentation, represents a more accurate view of the Williams Act. As the legislative history and subsequent judicial interpretation of the Williams Act make clear, § 14(e) was not intended to create a federal cause of action for all harms suffered because of the proffering or the withdrawal of tender offers. Rather, § 14(e) was enacted principally as a disclosure statute, designed to insure that fully-informed investors could intelligently decide how to respond to a tender offer.[3] Considered in light of this philosophy of disclosure, withdrawal of the December offer did not violate § 14(e) since Burlington disclosed to the shareholders and to the general public the acts that allegedly constitute a breach of contract. In the analogous context of SEC Rule 10b-5, 17 C.F.R. § 240.10b-5 (1983), the Supreme Court has restricted the meaning of "manipulative device" to conduct "intended to mislead investors by artificially affecting

3. H.R. Rep. No. 1711, 90th Cong., 2d Sess. 11 (1968) (the Williams Act was "designed to make the relevant facts known so that shareholders have a fair opportunity to make their decisions"); S. Rep. No. 550, 90th Cong., 1st Sess. 3 (1967). *See* Edgar v. Mite Corp., 457 U.S. 624, 639 (1982); Piper v. Chris-Craft Industries, 430 U.S. 1, 31 (1977) (the Williams Act "was designed solely to get needed information to the investor"); Rondeau v. Mosinee Paper Corp., 422 U.S. 49, 58 (1975).

market activity." *Santa Fe Ind. v. Green*, 430 U.S. 462, 477 (1977); *see also Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 199 (1976). That narrow definition of manipulation reinforces our view that Burlington complied with § 14(e) by fully disclosing its withdrawal of the December offer.

Although we share the Sixth Circuit's concern about defensive strategies "expressly designed" to "artificially affect normal healthy market activity," *Mobil, supra*, 669 F.2d at 374, we decline to join that court's open-ended notion of manipulative acts. To be sure, in drafting § 14(e) Congress chose to prohibit not only "fraudulent" and "deceptive" acts or practices, but also the "manipulative" ones, and therefore arguably sought to reach a broader range of conduct than mere misrepresentation. *See Mobil, supra*, 669 F.2d at 376-77; *see also* Note, *Target Defensive Tactics as Manipulative Under Section 14(e)*, 84 Col. L. Rev. 228, 237-8 (1984). But if taken at face value, there is a danger that the *Mobil* holding would transform all decisions by bidders or by target management that affect a tender offer contest into "artificial" influences.[4] Absent a requirement of deception, the Williams Act

4. For scholarly criticism of the broad reach of the *Mobil* holding, *see, e.g.*, Prentice, Target Board Abuse of Defensive Tactics: Can Federal Law Be Mobilized to Overcome the Business Judgment Rule? 8 J. of Corp. Law, 337, 353-58; Profusek, Tender Offer Manipulation: Tactics and Strategies After Marathon, 36 Sw.L.J. 975, 991-95 (1982); Note, The Future of Lock-Ups After Mobil Corp. v. Marathon Oil, 27 St. Louis U.L.J. 261, 281-82 (1983); Note, "Lock-Up" Enjoined Under Section 14(e) of Securities Exchange Act, 12 Seton Hall L. Rev. 881, 891-95 (1982). *But see* Target Defensive Tactics, *supra*, 84 Col. L. Rev. at 252-62; Note, Section 14(e) of the Williams Act: Can There Be Manipulation with Full Disclosure or Was the Mobil Court Running on Empty?

would mandate that the federal courts supervise the substantive fairness of practically all tender offers. Mindful of the Supreme Court's instruction in *Santa Fe* that we should be reluctant to federalize state corporate law, 430 U.S. at 479, we reject *Mobil's* expansive view of § 14(e) and hold that deception is an essential element of a manipulative act.

Schreiber's second theory of recovery -- that Burlington failed to disclose the golden parachutes and the fact that such favors persuaded El Paso management to grant approval of the January offer -- does incorporate a claim of deception. As the district court correctly recognized, however, the alleged January nondisclosure was not causally linked to Schreiber's damages. The losses she sustained were the result of Burlington's decision to cancel the December offer, a decision unaffected by Burlington's alleged nondisclosure in the January offer. Even if Burlington had made full disclosure in the January offer, this information would have made no difference to shareholders like Schreiber, whose injury had already been caused by the December rescission. Lacking a causal link between the alleged misrepresentation and the injuries, Schreiber's second theory also fails.

III.

Our decision today by no means constitutes an endorsement of the conduct which the complaint attributes to the defendants. Of special concern to us are Schreiber's averments that El Paso management breached its fiduciary duty to stockholders when it negotiated such self-serving arrangements as the golden parachutes. Nonetheless, in the wake of *Sante Fe's* instruction that "once full and fair disclosure has occurred, the fairness of the transaction is at most a

tangential concern of the statute," 430 U.S. at 477-78, we are constrained to hold, until Congress directs otherwise, that shareholders like Schreiber must rely on the remedies provided by state law.

Accordingly, the judgment of the district court will be affirmed.

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5. Currently pending in the Delaware Court of Chancery is a certified class action on behalf of the same class that Schreiber seeks to represent here. Gilbert & Steiner v. The El Paso Co. and Burlington Northern Inc. (Del. Ch. Consol. Civ. Act. Nos. 7075 & 7079). The plaintiffs in that case assert under state law substantially the same claims for breach of contract and breach of fiduciary duty that Schreiber presses before us here.

A True Copy:

Teste:

Clerk of the United States Court of Appeals
for the Third Circuit

Offer to Purchase for Cash

Up to 25,100,000 Shares of Common Stock

of

THE EL PASO COMPANY

at

$24 Net Per Share

by

R-H HOLDINGS CORPORATION

A Wholly-Owned Subsidiary

of

BURLINGTON NORTHERN INC.

THE PRORATION PERIOD WILL EXPIRE AT 12:00 MIDNIGHT, NEW YORK CITY TIME, ON THURSDAY, DECEMBER 30, 1982. THE WITHDRAWAL DEADLINE IS 12:00 MIDNIGHT, NEW YORK CITY TIME, ON WEDNESDAY, JANUARY 12, 1983. THE OFFER WILL EXPIRE AT 12:00 MIDNIGHT, NEW YORK CITY TIME, ON WEDNESDAY, JANUARY 19, 1983, UNLESS EXTENDED.

THE OFFER IS NOT CONDITIONED UPON ANY MINIMUM NUMBER OF SHARES BEING TENDERED.

IMPORTANT

Stockholders desiring to tender their Shares should either (1) complete and sign the Letter of Transmittal or a facsimile therof, have their signature thereon guaranteed if required by Instruction 1 of the Letter of Transmittal and forward the Letter of Transmittal with their stock certificates and any other required documents to the Depositary or (2) request their broker, dealer, commercial bank, trust company or other nominee to effect the transaction for them. See Section 5. Stockholders having Shares registered in the name of a broker, dealer, commercial bank, trust company or other nominee must contact such person if they desire

to such Shares. Stockholders who desire to tender Shares and whose certificates for such Shares are not immediately available should tender such Shares by following the procedures for guaranteed delivery set forth in Section 5.

Questions and requests for assistance may be directed to the Dealer Manager or the Information Agent at their respective addresses and telephone numbers set forth on the back cover page of this Offer to Purchase. Requests for additional copies of the Offer to Purchase and the Letter of Transmittal may be directed to the Information Agent, the Dealer Manager or to brokers, dealers, commercial banks or trust companies.

The Dealer Manager for the Offer is:

Shearson/American Express Inc.

December 21, 1982

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To the Holders of Common Stock of

The El Paso Company:

R-H Holdings Corporation, a Delaware corporation (the "Purchaser") and a wholly-owned subsidiary of Burlington Northern Inc., a Delaware corporation ("BNI"), hereby offers to purchase up to 25,100,000 shares of Common Stock, par value $3 per share (shares of Common Stock being hereinafter referred to as "Shares"), of The El Paso Company, a Delaware corporation (the "Company"), for $24 per Share net to the seller in cash, upon the terms and subject to the conditions set forth in this Offer to Purchase and in the related Letter of Transmittal (which together constitute the "Offer"). Tendering stockholders will not be obligated to pay brokerage commissions or, except as set forth in Instruction 6 of the Letter of

Transmittal, stock transfer taxes on the purchase of Shares by the Purchaser. The Purchaser will pay all charges and expenses of the Depositary and the Information Agent.

According to the Company's Quarterly Report on form 10-Q for the quarter ended September 30, 1982 (the "Company's Third Quarter 10-Q"), 49,541,596 Shares were outstanding as of October 20, 1982, and, as of September 30, 1982, an additional 1,519,756 Shares were issuable upon conversion of the Company's outstanding 13% convertible subordinated notes. According to the Company's Annual Report on Form 10-K for the year ended December 31, 1981 (the "Company's 1981 10-K"), 155,789 Shares were reserved for issuance as of that date pursuant to the employee stock option plans, of which 148,797 Shares were

issuable upon exercise of the then outstanding stock options. BNI owns beneficially 537,800 Shares (or 1.1% of the presently outstanding Shares). See Section 9. 25,100,000 Shares, together with the 537,800 Shares beneficially owned by BNI, constitute approximately 51.8% of the Shares reported outstanding as of October 20, 1982, and 50.1% of those outstanding Shares, together with the Shares issuable upon the conversion of the foregoing convertible securities and upon exercise of the foregoing options.

The Offer is not conditioned on any minimum of Shares being tendered.

1. **Terms of the Offer; Proration.** Upon the Terms and subject to the conditions of the Offer, the Purchaser will accept for payment and purchase up to 25,100,000 Shares which are validly

tendered at or prior to the Expiration Date and not withdrawn in accordance with Section 3 of this Offer to Purchase. The Purchaser expressly reserves the right to purchase additional Shares pursuant to the Offer, although it has no current intention to do so. The "Expiration Date" for the Offer shall be 12:00 Midnight, New York City Time, on Wednesday, January 19, 1983, unless the Purchaser shall, in its sole discretion, have extended the Offer, in which event the term "Expiration Date" shall mean the latest time and date on which the Offer as so extended by the Purchaser shall expire.

The manner in which the Purchaser will purchase validly tendered Shares, upon the terms and subject to the conditions of the Offer, will depend on whether the Offer is over-subscribed by

Shares validly tendered at or prior to 12:00 Midnight, New York City Time, on Thursday, December 30, 1982 (the "Proration Date"), and not withdrawn in accordance with Section 3. If more than 25,100,000 Shares (or any greater number of Shares which the Purchaser elects to purchase pursuant to the Offer) are validly tendered at or prior to the Proration Date and not withdrawn, then (i) upon the terms and subject to the conditions of the Offer, Shares so tendered will be purchased, on a pro rata basis (with appropriate adjustments to avoid purchases of fractional Shares), according to the number of Shares validly tendered by each stockholder at or prior to the Proration Date and not withdrawn, and (ii) subject to the right of the Purchaser after the Proration Date to increase the number of Shares

which it elects to purchase pursuant to the Offer, Shares tendered after the Proration Date will not be purchased. If fewer than 25,100,000 Shares (or any greater number of Shares which the Purchaser elects to purchase pursuant to the Offer) are validly tendered at or prior to the Proration Date and not withdrawn, then, upon the terms and subject to the conditions of the Offer, the Purchaser will purchase all Shares so tendered and not withdrawn, and any Shares validly tendered thereafter and at or prior to the Expiration Date and not withdrawn will, upon the terms and subject to the conditions of the Offer, be purchased on a first-come, first-served basis until 25,100,000 Shares (or any greater number of Shares which the Purchaser elects to purchase pursuant to the Offer) have been purchased.

Because of the difficulty of determining the precise number of Shares validly tendered and not withdrawn, the Purchaser does not expect that it will be able to announce the final proration factor, if prorating of tendered Shares is required, until approximately nine New York Stock Exchange ("NYSE") trading days after the Proration Date. Preliminary results of proration will be announced by press release as soon as practicable after the Proration Date. Holders of Shares may obtain such preliminary information from the Information Agent and the Dealer Manager, and may be able to obtain such information from their brokers.

The Purchaser expressly reserves the right, at any time, or from time to time, to extend the period of time during which the Offer is open by giving

oral or written notice of such extension to the Depositary. The Purchaser also expressly reserves the right (i) to terminate the Offer and not accept for payment any Shares not theretofore accepted for payment upon the occurrence of any of the conditions set forth in Section 15 hereof, by giving oral or written notice of such termination to the Depositary and (ii) at any time, or from time to time, to amend the Offer. Any such extension, termination or amendment will be followed as promptly as practicable by public announcement thereof, such announcement in the case of an extension to be made no later than 10:00 A.M., New York City Time, on the next business day after the previously scheduled Expiration Date. Without limiting the manner in which the Purchaser may choose to make any such public announcement, the Purchaser shall

have no obligation to publish, advertise or otherwise communicate any such public announcement, otherwise than by making a release to the Dow Jones News Service.

A request is being made to the Company for the use of its stockholder lists and security position listings for the purpose of disseminating the Offer to holders of Shares. The Offer to Purchase and Letter of Transmittal will be mailed to record holders of Shares and will be furnished to brokers, banks and similar persons whose names, or whose nominees, appear on the stockholder lists or, if applicable, who are listed as participants in a clearing agency's security position listing, for subsequent transmittal to beneficial owners of Shares.

2. **Acceptance for Payment and Payment.** Upon the terms and subject to the conditions of the Offer (including, if the Offer is extended, the terms and conditions of any such extension), the Purchaser will purchase, by accepting for payment, and will pay for, Shares validly tendered and not withdrawn, as promptly as practicable after the latest of: (i) 12:00 Midnight, New York City Time, on Wednesday, January 12, 1983 or, at the option of the Purchaser, the Expiration Date; (ii) the expiration of the waiting period applicable to the consummation of the Offer under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Hart-Scott Act") and (iii) with respect to any Shares not theretofore accepted for payment as provided herein, the expiration of any additional withdrawal period resulting

from the commencement of a tender offer for Shares by another bidder (other than the Company), as described in Section 3.

BNI delivered a Notification and Report Form under the Hart-Scott Act prior to 5:00 P.M., Eastern Standard Time, on December 20, 1982 to both the Federal Trade Commission (the "FTC") and the Antitrust Division of the Department of Justice (the "Antitrust Division"), and, accordingly, BNI believes that the waiting period under the Hart-Scott Act applicable to the Offer will expire at 11:59 P.M., New York City Time, on Tuesday, January 4, 1983. However, because funding for certain federal agencies, including the FTC and the Department of Justice, lapsed, the Premerger Notification Office of the Bureau of Competition of the FTC advised BNI of its position that the waiting period under the Hart-

Scott Act would not commence until the first business day after funding is restored. Prior to the expiration of the waiting period, the FTC or the Antitrust Division may extend the waiting period by requesting additional information or documentary material from BNI. If such a request is made, the waiting period will expire at 11:59 P.M., New York City Time, on the tenth day after the date of substantial compliance by BNI with such request. Thereafter, the waiting period can be extended only by court order. For additional information regarding the Hart-Scott Act, see Section 13.

For purposes of the Offer, the Purchaser shall be deemed to have accepted for payment (and thereby purchased) tendered Shares if, as and when the Purchaser gives oral or written

notice to the Depositary, as agent for tendering stockholders, of its acceptance for payment of such Shares pursuant to the Offer. Payment for Shares purchased pursuant to the Offer will be made by deposit of the purchase price therefor with the Depositary, which will transmit payments to tendering stockholders thereafter. Under no circumstances will interest on the purchase price for Shares be paid by the Purchaser, regardless of any delay in transmitting such payments. If any tendered Shares are not purchased, or if certificates are submitted for more Shares than are tendered, certificates for the unpurchased Shares will be returned, without expense to the tendering stockholder, as promptly as possible following the expiration or termination of the Offer.

The Purchaser reserves the right to transfer or assign to BNI, or to one or more affiliates or direct or indirect subsidiaries of BNI (other than Burlington Northern Railroad Company or any of its subsidiaries), the right to purchase Shares tendered pursuant to the Offer, but any such transfer or assignment will not relieve the Purchaser of its obligations under the Offer and will not prejudice the rights of tendering stockholders to receive payment for Shares properly tendered and accepted for payment.

3. **Withdrawal Rights.** Except as otherwise set forth in this Section, tenders of Shares made pursuant to the Offer are irrevocable. Shares tendered pursuant to the Offer may be withdrawn at any time prior to 12:00 Midnight, New York City Time, on Wednesday, January 12, 1983, and, unless theretofore

purchased by the Purchaser pursuant to the Offer, may also be withdrawn at any time after Friday, February 18, 1983. In addition, if another bidder (other than the Company) commences a tender offer for some or all of the Shares, Shares tendered pursuant to the Offer which have not theretofore been accepted for payment by the Purchaser as provided herein may also be withdrawn on the date of, and for a period of ten business days after, the commencement (other than by public announcement as described in Rule 14d-2(b) promulgated under the Securities Exchange Act of 1934 (the "Exchange Act")) of such competing offer, provided that the Purchaser has received notice or otherwise has knowledge of such competing offer. For purposes of the Offer, a "business day" means any day other than a Saturday,

Sunday or federal holiday, and consists of the time period from 12:01 A.M. through 12:00 Midnight, New York City Time.

For a withdrawal to be effective, a written, telegraphic, telex or facsimile transmission notice of withdrawal must be timely received by the Depositary at the address set forth on the back cover page of this Offer to Purchase. Any notice of withdrawal must specify the name of the tendering stockholder, the number of Shares to be withdrawn and the name of the registered holder(s) of the certificates evidencing such Shares, if different from that of the tendering stockholder. If certificates for Shares have been delivered or otherwise identified to the Depositary, then prior to the physical release of such certificates, the tendering stockholder must

also submit the serial numbers shown on the particular certificates evidencing such Shares, and the signature on his notice of withdrawal must be guaranteed by a member firm of a registered national securities exchange or a member of the National Association of Securities Dealers, Inc. ("NASD") or by a commercial bank or trust company having an office or correspondent in the United States (an "Eligible Institution"). All questions as to the form and validity (including time of receipt) of notices of withdrawal will be determined by the Purchaser, in its sole discretion, whose determination shall be final and binding. Any Shares withdrawn will be deemed not properly tendered for purposes of the Offer. However, withdrawn Shares may be re-tendered, by following any of the procedures described in

Section 5, at any subsequent time prior to the expiration of the Offer.

4. **Certain Tax Consequences.** Sales of Shares by stockholders of the Company pursuant to the Offer will be taxable transactions for federal income tax purposes, and may also be taxable transactions for state, local and other tax purposes.

A stockholder who receives cash pursuant to the Offer in exchange for his Shares will recognize gain or loss for federal income tax purposes equal to the difference between the amount of cash received and the stockholder's tax basis in the Shares tendered. If the stockholder holds his Shares as a capital asset at the time of such sale, such gain or loss will be long-term or short-term capital gain or loss, depending on whether the holding period for such

Shares is more than 12 months or is 12 months or less.

The above discussion may not be applicable to a stockholder who acquired his Shares pursuant to the exercise of an employee stock option or otherwise as compensation.

This federal tax discussion is for general information only. Each stockholder is urged to consult his own tax advisor as to the particular tax consequences of the Offer to him, including the effect and applicability of state, local, foreign and other tax laws.

5. **Procedure for Accepting the Offer and Tendering Shares.** In order for a holder of Shares to tender any of his Shares pursuant to the Offer, certificates for such Shares, together with a properly completed and duly executed Letter of Transmittal or facsimile

thereof, with any required signature guarantees and any other required documents, must be received by the Depositary at any of its addresses set forth on the back cover page of this Offer to purchase at or prior to the desired date of tender, which must be at or prior to the Expiration Date, or the tendering stockholder must comply with the guaranteed delivery procedures set forth below. **Because of the possibility of the Offer's being over-subscribed, in order for stockholders to ensure participation in any proration pool, stockholders must properly tender their Shares at or prior to the Proration Date.** See Section 1. Signatures on all Letters of Transmittal must be guaranteed by an Eligible Institution unless the Shares tendered pursuant thereto are tendered (i) by a registered holder of

Shares who has not completed the box entitled "Special Payment Instructions" or the box entitled "Special Delivery Instructions" on the Letter of Transmittal or (ii) for the account of any Eligible Institution. If the certificates are registered in the name of a person other than the signer of the Letter of Transmittal, the certificates must be endorsed or accompanied by appropriate stock powers, in either case signed exactly as the name or names of the registered owner or owners appear on the certificates, with the signatures on the certificates or stock powers guaranteed as aforesaid.

The method of delivery of certificates for Shares and all other required documents is at the election and risk of the owner, but if sent by mail, it is recommended that they be sent by

registered mail, with return receipt requested, properly insured.

If a stockholder desires to tender Shares pursuant to the Offer and that stockholder's certificates for Shares are not immediately available or such stockholder cannot deliver his certificates and all other required documents to the Depositary on or prior to the desired date of tender, such Shares may nevertheless be tendered, provided that all of the following conditions are satisfied:

(a) the tender is made by or through an Eligible Institution;

(b) a properly completed and duly executed Notice of Guaranteed Delivery substantially in the form provided by the Purchaser is received by the Depositary as provided below on or prior to the desired date of tender, which must

be at or prior to the Expiration Date; and

(c) the certificates for all tendered Shares, in proper form for transfer, together with a properly completed and duly executed Letter of Transmittal or facsimile copy thereof and all other documents required by the Letter of Transmittal are received by the Depositary within eight NYSE trading days after the date of such Notice of Guaranteed Delivery.

The Notice of Guaranteed Delivery may be delivered by hand or transmitted by telegram, telex, facsimile transmission or mail to the Depositary and must include a guarantee by an Eligible Institution in the form set forth in the Notice.

In all cases payment for Shares tendered pursuant to the Offer will be made by the Depositary only after receipt by the Depositary of certificates therefor, a properly completed and duly executed Letter of Transmittal or a facsimile copy thereof and all other required documents.

A tender of Shares by any of the procedures set forth above will constitute a binding agreement between the tendering stockholder and the Purchaser in accordance with the terms and subject to the conditions set forth in the Offer.

By executing the Letter of Transmittal as set forth above, the stockholder irrevocably appoints designees of the Purchaser as proxies, with full power of substitution, to the extent of such stockholder's rights with respect

to the Shares tendered thereby and purchased by the Purchaser (and any and all other shares of capital stock and such other securities issued or issuable in respect of such Shares on or after December 17, 1982). Such appointment will become effective when, and only to the extent that, the Purchaser purchases those Shares as proved herein. Upon such acceptance for payment, all prior proxies given by such stockholder with respect to the purchased Shares or such other securities will, without further action, be revoked and no subsequent proxies will be effective. The Purchaser's designees will, with respect to those Shares and other securities, be empowered to exercise all voting and other rights of those stockholders as the Purchaser and its designees in their sole discretion may deem proper in

respect of any annual, special or adjourned meeting of the Company's stockholders, or consent in lieu of any such meeting or otherwise.

All questions as to the form of all documents and the validity, eligibility (including time of receipt) and acceptance of tendered Shares will be determined by the Purchaser, in its sole discretion, whose determination will be final and binding. The Purchaser reserves the absolute right to reject any or all tenders of any particular Shares which are not in appropriate form or the acceptance of which would, in the opinion of the Purchasers' counsel, be unlawful. The Purchaser also reserves the absolute right to waive any of the conditions of the Offer or any defect or irregularity in the tender of any Shares, and the Purchasers' interpretion

of the terms and conditions of the Offer (including the letter of Transmittal and the instructions thereto) will be final. No tender of Shares will be deemed to have been properly made until all defects and irregularities have been cured or waived. BNI, the Purchaser, the Depositary, the Dealer Manager and the Information Agent shall not be under any duty to give notification of any defects or irregularities in tenders and shall not incur any liability for failure to give any such notification.

6. **Price Range of Shares; Dividends.** The Shares are listed and principally traded on the NYSE, and are listed and traded on the Midwest and Pacific Stock Exchanges. The high and low sales prices of the Shares on the Composite Tape by calendar quarter from January 1, 1980, and the dividends paid

in each such quarter, as reported in published financial sources, are as follows:

	High	Low	Dividends
1980:			
First Quarter	$30½	$16¼	$.37
Second Quarter	22⅞	15¾	.37
Third Quarter	24⅞	19½	.37
Fourth Quarter	29½	22	.37
1981:			
First Quarter	25¾	19¼	.37
Second Quarter	25½	20⅞	.37
Third Quarter	28⅛	20¼	.37
Fourth Quarter	26⅛	23¼	.37
1982:			
First Quarter	28⅛	20½	.37
Second Quarter	25⅜	17⅜	.37
Third Quarter	22½	13⅜	.37
Fourth Quarter (through December 20, 1982)	19¾	16	.37

The last reported sales price of the Shares on the Composite Tape on Monday, December 20, 1982, the last full trading day prior to the public announcement of the Offer, was $18-1/4 per Share.

Stockholders are urged to obtain a current market quotation for the Shares.

7. **Effect on Market for the Shares; Regist ation Under the Exchange Act.** The purchase of Shares pursuant to the Offer will reduce the number of Shares that might otherwise trade publicly and could adversely affect the liquidity and market value of the remaining Share held by the public.

According to the Company's Annual Report to Stockholders for the year ended December 31, 1981 (the "Company's 1981 Annual Report"), there were approximately 98,447 record holders of Shares at December 31, 1981, and, according to the Company's Third Quarter 10-Q, there were 49,541,596 Shares outstanding as of October 20, 1982. Published guidelines of the NYSE indicate that it would consider delisting the outstanding Shares if there were fewer than 1,200 holders of 100 or more Shares, if the number of publicly-held Shares were less than 600,000 or if the aggregate market value of the publicly-held Shares did not exceed $5 million. The Purchaser does not believe that its purchases of Shares pursuant to the Offer will result in the delisting of the Shares by the NYSE, the Midwest Stock Exchange or the Pacific Stock Exchange.

If all such Exchanges were to delist the Shares, it is possible that the Shares would continue to trade in the over-the-counter market and that price quotations would be reported by the NASD through the National Association of Securities Dealers Automated Quotation System, Inc. ("NASDAQ") or other sources. The extent of the public market for the Shares and the availability of such quotations would, however, depend upon the number of stockholders remaining at such time, the interest in maintaining a market in the Shares on the part of securities firms, the possible termination of registration under the Exchange Act, as described below, and other factors. The Shares are presently "margin securities" under the rules of the Board of Governors of the Federal Reserve System, which has the

effect, among other things, of allowing brokers to extend credit with such securities as collateral. Depending on factors similar to those described above, the Shares might no longer constitute "margin securities" for purposes of the Federal Reserve Board's margin regulations and, therefore, could no longer be used as collateral for loans made by brokers. The Purchaser does not believe that its purchases of Shares pursuant to the Offer will result in the Shares no longer constituting "margin securities."

The Shares are registered under the Exchange Act. Such registration may be terminated upon application of the Company to the Securities and Exchange Commission (the "Commission") if the outstanding Shares are not listed on a national securities exchange and there are fewer than 300 holders of record of

Shares. The termination of the registration of the Shares under the Exchange Act would reduce the information required to be furnished by the Company to its stockholders and to the Commission and would make certain of the provisions of the Exchange Act, such as the short-swing profit recovery provisions of Section 16(b) and the requirement of furnishing a proxy statement in connection with stockholders' meetings, no longer applicable to the Company. Furthermore, "affiliates" of the Company and persons holding "restricted securities" of the Company might not be able to dispose of such securities pursuant to Rule 144 promulgated under the Securities Act of 1933. If registration of the Shares under the Exchange Act were terminated, the Shares would not longer be "margin securities" or eligible for

NASDAQ reporting. The Purchaser does not believe that its purchase of Shares pursuant to the Offer will result in the Shares becoming eligible for deregistration under the Exchange Act.

8. **Certain Information Concerning the Company.** The Company is a Delaware corporation, with its principal executive offices at 2727 Allen Parkway, Houston, Texas 77019.

According to the Company's 1981 Annual Report, the Company is a diversified energy company, the principal activities of which are natural gas and oil exploration and production, natural gas liquids operations, natural gas transmission and chemical manufacturing.

Set forth below is certain selected consolidated financial information for the Company's last three fiscal years, which was excerpted or derived from the

Company's 1981 Annual Report, and for the nine months ended September 30, 1981 and 1982, which was excerpted or derived from the Company's Third Quarter 10-Q and its Quarterly Report on Form 10-Q for the quarter ended September 30, 1981. More comprehensive financial information is included in such reports and other documents filed by the Company with the Commission, and the following summary is qualified in its entirety by reference to such reports and other documents and all of the financial information (including any related notes) contained therein. Such reports and other documents may be examined and copies may be obtained in the manner set forth below.

THE EL PASO COMPANY AND SUBSIDIARIES

Selected Consolidated Financial Information

(In Millions, Except Per Share Data)

	Year Ended December 31,		
	1979	1980	1981
CONSOLIDATED STATEMENT OF INCOME			
Operating Revenues	$2,395	$3,204	$3,909
Income from Continuing Operations	111	109	147
Net Income (Loss)	138	(303)	147
Earnings (Loss) per Common Share			
From Continuing Operations	2.40	2.30	3.07
Discontinued Operations			
Income (Loss) From Discontinued Operations	.59	(.98)	—
Loss on Discontinuance	—	(7.72)	—
Net Income (Loss)	2.99	(6.40)	3.07

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	Nine Months Ended September 30,	
	1981	1982
	(Unaudited)	
Operating Revenues	$2,781	$2,845
Income before Extraordinary Gain	108	66
Net Income	108	72
Earnings per Common Share		
Income before Extraordinary Gain	2.26	1.35
Net Income	2.26	1.47

	December 31,		September 30,	
	1980	1981	1981	1982
			(Unaudited)	
CONSOLIDATED BALANCE SHEET				
Net Working Capital (Current Assets Less Current Liabilities)	$ (238)	$ (254)	$ (285)	$ (245)
Total Assets	3,025	3,711	3,456	4,075
Long-Term Debt, Less Current Maturities	1,169	1,253	1,151	1,564
Long-Term Debt to be Retired by Security Fund	20	50	43	23
Stockholders' Equity	436	531	506	565

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According to the Company's Third Quarter 10-Q:

"[The Company] discontinued its LNG operations as of 1980. The discontinued operations included three LNG tankers delivered to [the Company] under an insurance settlement completed in October 1980. LNG activities continue to be directed toward maximizing the liquidation value of the LNG assets.

"In February 1982, [the Company] sold two of the three tankers covered by the insurance settlement as discussed in [the Company's] 1981 Annual Report on Form 10-K. An overall provision for loss on termination was provided in the 1980 financial statements. Final overall determination of the outcome of asset disposal is still dependent upon realization from all LNG assets. Consequently, no gain

or loss on individual transactions (including the aforementioned sale) will be recognized for financial purposes. Management believes that the ultimate outcome of the overall termination will not result in any material adjustment to the loss recognized in 1980.

"The balance in 'Long-term debt to be retired by Security Fund' as shown in the accompanying balance sheet at September 30, 1982 and December 31, 1981 consists of the following:

	1982	1981
	(in thousands)	
Long-term debt including current maturities..	$72,347	$223,565
Insurance proceeds receivable.....	(23,333)	(140,000)
Security Fund balance.....	(26,402)	(33,587)
	$22,612	$ 49,978

"Such debt has been shown separately inasmuch as the insurance settlement established a Security Fund which, by its terms, is pledged to retire such debt. Insurance proceeds to be received (less certain lay-up and other

expenses) together with proceeds from sales of vessels must be deposited in such fund until it is sufficient to retire the debt."

The Company is subject to the informational filing requirements of the Exchange Act and, in accordance therewith, is required to file reports and other information with the Commission relating to its business, financial condition, and other matters. Information as of particular dates concerning the Company's operating results, financial condition, directors and officers, their remuneration and options granted to them, the principal holders of the Company's securities and any material interest of such persons in transactions with the Company, and other matters required to be disclosed in proxy statements and annual reports distributed to

the Company's stockholders is filed with the Commission, and may be inspected at the Commission's public reference facilities at 450 Fifth Street, N.W., Washington, D.C., and should be available for inspection at the regional offices of the Commission in New York (Room 1102, 26 Federal Plaza), Chicago (Room 1204, 219 South Dearborn Street) and Los Angeles (Suite 1710, 10960 Wilshire Boulevard). Copies may be obtained by mail, upon payment of the Commission's customary fees, from the Commission's principal office at 450 Fifth Street, N.W. Washington, D.C. 20549. Such material should also be available for inspection at the offices of the NYSE, 20 Broad Street, New York, New York, the Midwest Stock Exchange, 120 South LaSalle Street, Chicago, Illinois, and the Pacific Stock Exchange, 618 South

Spring Street, Los Angeles, California, and 301 Pine Street, San Francisco, California.

Except as otherwise set forth herein, the information concerning the Company contained in this Offer to Purchase has been taken from or is based upon publicly available documents and records on file with the Commission and other publicly available information. Although the Purchaser does not have any knowledge that would indicate that any statements contained herein based on such documents and records are untrue, the Purchaser cannot take responsibility for the accuracy or completeness of the information contained in such documents and records, or for any failure by the Company to disclose events which may have occurred or may affect the significance or accuracy of

any such information but which are unknown to the Purchaser.

9. **Certain Information Concerning BNI and the Purchaser.** The Purchaser, a Delaware corporation, is a wholly-owned subsidiary of BNI. The Purchaser was formed on December 15, 1982 for the purpose of making the Offer, and has not engaged in any business to date. The principal executive offices of the Purchaser and BNI are located at 1111 Third Avenue, Seattle, Washington 98101.

BNI, a Delaware corporation, was incorporated on March 27, 1981 as a holding company pursuant to a plan of reorganization under which all stockholders of Burlington Northern Railroad Company became stockholders of BNI.

The principal business activities of BNI are in transportation and natural resources. Transportation operations

are principally a major rail carrier system and common carrier motor freight. Natural resource activities include the sale of timber and logs from land owned by BNI and the manufacture and sale of forest products. Such activities also include the sale of crude oil and natural gas, and the ownership of working interests and royalties and the granting of leases relating to the exploration, development and production of oil, gas, coal, iron ore and taconite, and other minerals. BNI also derives revenues from real estate sales, rentals and developments, and other minor operations.

The name, citizenship, business address, and present principal occupation or employment of each of the directors and executive officers of the Purchaser and BNI are set forth in Schedule A hereto.

Set forth below is certain selected consolidated financial information for BNI's last three fiscal years, which was excerpted and derived from BNI's Annual Report to Stockholders for the year ended December 31, 1981, and for the nine months ended September 30, 1981 and 1982, which was excerpted and derived from BNI's Quarterly Reports on Form 10-Q for the quarters ended September 30, 1981 and 1982. More comprehensive financial information is included in such reports and other documents filed by BNI with the Commission, and the following summary is qualified in its entirety by reference to such reports and other documents and all of the financial information (including any related notes) contained therein. Such reports and other documents may be examined and copies may be obtained in the

same manner as set forth in Section 8 with respect to the Company.

BURLINGTON NORTHERN INC. AND CONSOLIDATED SUBSIDIARIES

Selected Consolidated Financial Information

(In Millions, Except Per Share Data)

	Year Ended December 31,		
	1979	1980	1981
STATEMENT OF INCOME			
Revenues	$3,225	$3,954	$4,936
Net Income	176	223	272
Earnings per Common Share			
Primary	6.55	7.55	7.02
Assuming Dilution	5.50	6.63	7.02

	Nine Months Ended September 30,	
	1981	1982
	(unaudited)	
Revenues	$3,390	$3,101
Income From Continuing Operations	182	96
Income From Discontinued Operations	11	106
Net Income	193	202
Earnings Per Common Share		
Continuing Operations	4.67	2.42
Discontinued Operations Income	.29	.10
Gain on Sale of Discontinued Operations	—	2.74
Net Income	4.96	5.26

	December 31,		September 30,	
	1980	1981	1981	1982
BALANCE SHEET			(unaudited)	
Net Working Capital (Current Assets Less Current Liabilities)	$ 332	$ 360	$ 350	$ 509
Total Assets	5,267	5,674	5,489	5,819
Long-Term Debt	1,410	1,330	1,350	1,340
Common Stockholders' Equity—Net	2,431	2,629	2,577	2,773

BNI is currently the beneficial owner of 537,800 Shares (approximately 1.1% of the outstanding Shares), which were purchased in the open market during November and December 1982 by a wholly-owned subsidiary of BNI, at a total cost of $8,953,960 (including commissions) and at an average price per Share of $16.49 (excluding commissions). On December 16, 1982, that subsidiary transferred 100 Shares to the Purchaser.

Except for such Shares and except as may be set forth in Schedule A hereto, neither the Purchaser, BNI, nor to the best knowledge of the Purchaser and BNI, any of the persons listed on Schedule A hereto or any associate or majority-owned subsidiary of the Purchaser, BNI or any of the persons so

listed, beneficially owns or has a right to acquire any Shares, and neither the Purchaser, BNI, nor to the best knowledge of the Purchaser and BNI, any of the persons listed on Schedule A hereto, or any associate or majority-owned subsidiary of the Purchaser, BNI or any of the persons so listed, or any executive officer, director or subsidiary of any of the foregoing, has effected any transactions in Shares during the past 60 days.

Except as set forth in this Offer to Purchase, neither the Purchaser, BNI, nor to the best knowledge of the Purchaser and BNI, any of the persons listed on Schedule A hereto, has any contract, arrangement, understanding or relationship with any person with respect to any securities of the Company. Except as set forth in this Offer to Purchase,

since January 1, 1979, there have been no transactions that would require reporting under the rules of the Commission between the Purchaser, BNI, or, to the best knowledge of the Purchaser and BNI, any of the persons listed on Schedule A hereto, on the one hand, and the Company or any of its executive officers, directors or affiliates, on the other hand, and, except as set forth in this Offer to Purchase, since January 1, 1979, there have been no contacts, negotiations or transactions between the Purchaser, BNI or its subsidiaries or, to the best knowledge of the Purchaser and BNI, any of the persons listed on Schedule A hereto, on the one hand, and the Company or its affiliates, on the other hand, concerning a merger, consolidation or acquisition, a tender offer or other acquisition of securities, an

election of directors, or a sale or other transfer of a material amount of assets.

On January 7, 1981, in the United States District Court for the Western District of Washington, BNI pleaded guilty to, and on March 18, 1981 was convicted of, three counts of an indictment alleging that it had violated the Elkins Act, formerly 49 U.S.C. §41 (now codified at 49 U.S.C. §§11903 and 11915) by charging freight rates to a railroad customer at less than applicable tariffs. After further proceedings, BNI was sentenced to pay a fine of $20,000 on each count.

On September 20, 1978, in the United States District Court for the Western District of Washington, BNI pleaded guilty to, and was convicted of, two counts of an indictment alleging

that it had violated the Elkins Act by charging freight rates to another railroad customer at less than the applicable tariffs. BNI was sentenced to pay a fine of $20,000 on each count.

10. **Background of the Offer.** On December 20, 1982, Richard M. Bressler, Chairman and Chief Executive Officer of BNI, informed Travis H. Petty, Chairman and President of the Company, by telephone, of the Offer. In addition, on December 20, 1982, BNI delivered a letter to Mr. Petty. The text of that letter is as follows:

> "Dear Mr. Petty:
>
> We have long admired and respected your company and it management. After careful consideration and thorough analysis, we have determined that a majority holding in [the Company] by [BNI] makes sense. Indeed, we believe that this relationship would be beneficial to both our companies.
>
> Accordingly, our Board of Directors has authorized [BNI] to commence

> promptly a tender offer for approximately 51% of your company's common stock at $24 per share in cash.
>
> We believe that the price is a fair one. I am sure you will note that our offer affords your company's shareholders the opportunity to obtain immediately a significant premium over the current market price of your company's common shares.
>
> You should know that implicit in our investment proposal is our recognition of your company's management performance which we consider critical to the long-term growth of [the Company] and the success of our investment. We hope and expect that your company's management would continue its service uninterrupted. Indeed, in light of your experience and stature, we would expect to extend to you a position on our Board of Directors.
>
> My colleagues and I would welcome the opportunity to meet with you, your board or your representatives to discuss our offer. We sincerely hope that, together, we can proceed promptly toward the goal of assuring that the best interests of everyone concerned with this undertaking are served."

On September 24, 1982, the Dow Jones News Service reported the following news item:

[BNI] denies it will bid for [the Company]. [BNI] denied rumors that it was about to buy [the Company]. Those rumors according to securities analysts had driven the price of [the Company's] stock up as much as two points on heavy volume earlier today.

"There are no imminent plans to buy [the Company]." Said Allan Boyce, Vice President for Public Affairs at [BNI] "We are not making an offer."

However Boyce did say that [BNI], a diversified company with interests in railroads, air freight, mining and lumber is "interested in the posibility of acquisitions in the energy field."

[The Company's] Chairman, Travis Petty, issued a statement saying [the Company] did not know the reason for the heavy trading in its stock. It offered no further explanation.

Analysts however linked the surge in [the Company's] price to persistent rumors that [BNI] was about to bid for [the Company].

[The Company] currently is trading on the NYSE Composite at 21-1/8 up 1-5/8 on volume of 688,500 shares while [BNI] is off 1/8 to 43-3/4 on 223,100 shares.

Foster Corwith of Dean Witter Reynolds said he had received calls from people who had even told him that the tender offer would be made at $35 a share. But analysts generally agreed that [the Company]

was a bigger company than [BNI] was interested in buying.

"I heard that rumor yesterday morning" said Robert Long of First Boston "and I determined that it was not likely." Corwith said "[BNI] has a lot of money floating around. They might be able to handle a $700 to $800 million acquisition. But at $35 a share [the Company] would cost [BNI] an estimated $1.75 billion." Corwith estimated.

"My best shot is that it's too big for [BNI]" said John Kawa also with Dean Witter Reynolds "but anything's possible."

A spokeswoman for Rauscher Pierce Refsnes Inc. which also follows [the Company] quoted from what he called an "internal memo" which

stated that [the Company] was "genuinely surprised" at the upward price movement in [the Company] because there were "no announcements that could account for this activity."

The memo went on to say that a takeover would be "difficult considering its size." The memo said [the Company] had "a market capitalization of over $1 billion."

On September 24, 1982, a representative of an investment banker for the Company advised BNI that the Company was not interested in being acquired.

11. Purpose of the Offer. The Offer is being made for the purpose of acquiring a majority of the issued and outstanding Shares, thereby enabling BNI to control the business of the Company. If 25,100,000 Shares are purchased by

the Purchaser pursuant to the Offer, BNI would own beneficially approximately 51.8% of the issued and outstanding Shares (based on the number of Shares reported to be outstanding on October 20, 1982 in the Company's Third Quarter 10-Q), and BNI, through the Purchaser, would have the power under Delaware law and the Company's Certificate of Incorporation and By-Laws to cause the election of all of the Company's directors.

If, after the Offer, BNI beneficially owns a majority of the issued and outstanding Shares, BNI intends to cause the Purchaser promptly thereafter, consistent with applicable legal requirements, to act by written consent and without a meeting of the stockholders of the Company to elect as directors of the Company a sufficient number of nominees of BNI to constitute at least a majority

of the Board of Directors of the Company. BNI intends that such nominees will be selected from among the members of BNI's Board of Directors. For certain information regarding the members of BNI's Board of Directors, see Schedule A.

In addition, if after the Offer BNI beneficially owns a majority of the issued and outstanding Shares, or if it acquires a substantial percentage of those Shares (although less than a majority), BNI may seek to effect one or more transactions by which it would acquire beneficial ownership of the remaining Shares. Any possible transactions might be on terms (including the consideration offered per Share) the same as, or more or less favorable than, those of the Offer. A determination by BNI to seek to acquire the remaining

Shares will depend upon a number of considerations, including the Company's performance and prospects, its prevailing and prospective levels of cash flow, market, business and other general economic conditions, the level of interest rates, and other factors not now determinable. Such other factors include the outcome of an appeal, pending in the United States Supreme Court, of the decision of the United States Court of Appeals for the Fifth Circuit permitting the use by the Company of a gas pricing formula more favorable to the Company than that previously permitted to be used. The Court of Appeals held that price regulation for pipeline-produced gas, which had formerly been regulated by the Federal Energy Regulatory Commission under the Natural Gas Act of 1938 on the basis of "cost-of-service,"

with prices determined by reference to production costs and investment recovery, including a specified rate of return, is now subject to the provisions of the Natural Gas Policy Act of 1978, which sets certain uniform maximum lawful prices for gas production without reference to costs or specified rates of return. In addition, it may be necessary for BNI to obtain consents from its lender banks to acquire the remaining Shares. See Section 12.

If BNI were to determine to acquire the remaining Shares pursuant to a merger or similar business combination transaction, Delaware law and the Company's Certificate of Incorporation would require the approval of the Board of Directors of the Company and the affirmative vote of the holders of a majority of the outstanding Shares to

effect any such transaction. If the Purchaser purchases the 25,100,000 Shares sought in the Offer, BNI would beneficially own a majority of the outstanding Shares and the approval of such a business combination transaction by the stockholders would be assured.

If any such merger or other business combination transaction were to take place, holders of Shares may have certain rights to dissent and demand appraisal of their Shares under applicable Delaware law. If the statutory procedures were complied with, these rights could lead to a judicial determination of the fair value required to be paid to such dissenting holders for their Shares, exclusive of any element of value arising from the accomplishment or expectation of the merger or other transaction. The value so determined

could be more or less than the purchase price per Share offered pursuant to the Offer, or the merger or other transaction giving rise to the appraisal rights. Any such judicial determination of the fair value of Shares could be based upon considerations other than or in addition to the market value of the Shares, including asset values and earning capacity of the Company.

In addition, several recent decisions by the Delaware courts have held that a controlling stockholder of a company involved in a merger has a fiduciary duty to the other stockholders which requires that the merger be fair to such other stockholders. In determining whether a merger is fair to stockholders, the Delaware courts have considered, among other things, the type and amount of consideration to be received

by the stockholders and whether there is a valid business purpose for the transaction.

Moreover, any such merger or similar business combination transaction would have to comply with any applicable federal law then in effect. In particular, compliance with Rules 13e-3, promulgated under the Exchange Act, may be required. In such event, certain information relating to the fairness of the transaction and the consideration offered minority stockholders therein would be required to be filed with the Commission and disclosed to minority stockholders prior to the consummation of the transaction.

If, after the Offer, BNI beneficially owns less than a majority of the issued and outstanding Shares pursuant to the Offer, BNI may seek to acquire

additional Shares, as described below, and, depending on the number of Shares owned, may seek representation on the Company's Board of Directors, and otherwise to exercise significant influence over the Company's operating and financial policies. To accomplish these ends, consistent with applicable legal requirements, BNI may, among other things, solicit proxies to elect its nominees as directors (i) at the Company's next annual meeting of stockholders (which the By-Laws of the Company provide is to be held on the last Tuesday of April of every year), or (ii) prior thereto, at a special meeting of the Company's stockholders. Under the Company's By-Laws, stockholders holding a majority of the Company's voting power have the right to call a special stockholders' meeting, and BNI might seek to

join with other stockholders in making such a demand. In addition, under Delaware law and the Company's Certificate of Incorporation and By-Laws, the holders of a majority of the Company's voting power may act by written consent and without a meeting, and, therefore, BNI may, consistent with applicable legal requirements, solicit the written consent of other stockholders holding shares representing voting power that, together with the percentage of voting power beneficially owned by BNI, would be sufficient to elect BNI's nominees as directors of the Company.

In all events, BNI reserves the right, following the expiration or termination of the Offer, in conformity with all applicable legal requirements, to acquire additional shares or to dispose of any or all Shares beneficially owned

by it. Any such acquisition or disposition may be effected through private purchases or sales, open market transactions, future tender offers or otherwise, on terms and at prices which may be more or less favorable than those of the Offer.

BNI does not intend to change the management of the Company, the nature of the Company's business, or the location of its corporate headquarters. If BNI acquires control of the Company, BNI intends to seek additional information concerning the Company and its business and, based upon its review of that information, BNI may cause the Company to effect such changes in its business, corporate structure, capitalization, dividend policy and management as BNI deems appropriate. BNI does intend to evaluate the level of the Company's oil

and gas exploration expenditures and may consider means of coordinating the oil and gas exploration and production businesses of the Company and BNI, and, consistent with its fiduciary duties as a majority stockholder of the Company and depending upon the respective business needs, business policies and financial condition of the Company and BNI and other relevant business factors, BNI may allocate opportunities for oil and gas exploration and production to either the Company or to itself or to both.

Except as set forth in this Offer to Purchase, BNI has no specific plans or proposals with respect to any extraordinary corporate transaction, such as a merger, reorganization or liquidation involving the Company or any of its subsidiaries or a sale or transfer of a material amount of assets of the Company

or any of its subsidiaries, or a change in the present capitalization, dividend policy, corporate structure or business of the Company.

12. Source and Amount of Funds. The total amount of funds required by the Purchaser to purchase 25,100,000 Shares pursuant to the Offer and to pay related fees and expenses is estimated to be approximately $610 million. The Purchaser plans to obtain all of the funds required for the Offer through capital contributions or advances which will be made to the Purchaser by BNI.

BNI intends to obtain the required funds from general corporate funds, including cash and the proceeds of short-term investments and marketable securities, and from borrowings under one or more of three existing credit agreements (the "Facilities"). BNI has approximately $500 million available

from its general corporate funds and approximately $1 billion available for borrowings under the Facilities.

The lenders under the Facilities comprise 26 domestic and foreign lending institutions. Each borrowing by BNI under the Facilities (a "Borrowing") will be unsecured. Each Borrowing will bear interest at one of the three following annual rates, as selected by BNI at the time of making such Borrowing and from time to time thereafter: (i) a "Base Rate" equal to the base rate announced by a designated institution under the Facility utilized for the Borrowing, plus, after October 30, 1986, 1/4 of 1% per annum, (ii) for any one or more of several interest periods which may be selected by BNI from time to time, a "Eurodollar Rate" equal to the interbank Eurodollar offered rate (or average of such rates) for loans of like

amount and maturity, determined by a designated institution or group of reference institutions under such Facility or Facilities, plus 3/8 of 1% through October 30, 1986, or 5/8 of 1% thereafter, plus certain reserve and other costs, or (iii) in the case of any portion of the Borrowings which is under the Facility with domestic lending institutions, for any one or more of several interest periods which may be selected by BNI from time to time, a "Domestic Money Market Rate" equal to the average of the reserve-adjusted secondary market rates for certificates of deposit of the reference institutions under such Facility in like amount and maturity, plus 1/2 of 1% through October 30, 1986, or 3/4 of 1% thereafter. The commitment to provide funds under the Facilities terminates on October 31, 1986 (subject to earlier termination

in certain events), and the principal of all Borrowings outstanding on that termination date will be payable in eight installments, the first seven of which are each equal to 10% of the aggregate principal amount of Borrowings then outstanding and are payable semi-annually from April 30, 1987 through April 30, 1990, and the final installment of which is payable on October 31, 1990. BNI may prepay all or any portion of the Borrowings without penalty, subject to certain restrictions. The Facilities provide for the payment by BNI of a commitment fee on the amount of the unused portion of each lending institution's commitment at the rate of 1/4 of 1% per annum, and for the payment by BNI of certain cost increases certified by the relevant lending institution as having resulted from such institution agreeing to make

or maintain, or making or maintaining, Borrowings at the Eurodollar Rate or the Domestic Money Market Rate. The Facilities contain conditions, covenants, events of default and indemnities common in such agreements. The following are the foreign lending institutions and the principal amounts available from them under the Facilities: Barclays Bank International Limited, $50,000,000; and The Toronto-Dominion Bank, $75,000,000.

In connection with the Offer, BNI has obtained agreements by the requisite number of lending institutions under the Facilities which provide that if BNI and its subsidiaries make investments in certain types of companies (which would include the Company) which result in such a company's becoming a consolidated subsidiary of BNI in accordance with generally accepted accounting

principles, then BNI may elect that such company not be treated as a "subsidiary," "consolidated subsidiary" or "material subsidiary" for purposes of BNI's complying with, or determining BNI's compliance with, any of its covenants or agreements, or for purposes of any other provision contained in the Facilities, other than certain reporting requirements relating to all subsidiaries, certain provisions relating to agent lending institution dealings with any subsidiary, certain indemnities by BNI under the Facilities, and BNI's covenant to cause each subsidiary to pay such dividends as it may legally pay, to the extent necessary to provide BNI with funds to repay its obligations under the Facilities. Any such election would be effective for 30 months from December 20, 1982. BNI intends, if it holds a

majority of the outstanding Shares after the Offer, to make such an election with respect to the Company. BNI's right to make such an election, and any such election made by BNI, (i) with respect to any particular subsidiary, terminates immediately if BNI and its subsidiaries acquire ownership of 100% of the capital stock of such subsidiary, and (ii) terminates as to all subsidiaries as to which BNI has made such an election at any time that the aggregate amount of all investments by BNI in all such subsidiaries, together with the aggregate amount of all of the obligations of such subsidiaries guaranteed by BNI, exceeds $750 million. BNI has made no election with respect to any other subsidiary. It is anticipated that Borrowings incurred by BNI to finance the Offer will be repaid from internally generated

funds and through other sources, which may include the proceeds of long-term or short-term borrowings, or the sale of debt or equity securities. BNI does not believe that it will be necessary to require the Company to change its dividend policy in order to repay any such Borrowings.

13. Certain Legal Matters. Except as described below, based on its examination of publicly available information with respect to the Company, the Purchaser is not aware of any approval or other action by any federal, state or foreign governmental or administrative authority which would be required for the acquisition of Shares by the Purchaser as contemplated herein, or of any licenses or other regulatory permits which appear to be material to the business of the Company and which would be

adversely affected by the acquisition of Shares as contemplated herein. Should any such approval or other action be required, it is currently contemplated that such approval or action would be sought. There is no assurance that any such approval or other action, if needed, would be obtained or, if obtained would not be without substantial conditions, or that adverse consequences might not result to the business of the Company or that certain parts of the business of the Company might not have to be disposed of in the event that such approvals were not obtained or such other actions were not taken. The Purchaser's obligation under the Offer to accept for payment and pay for Shares is subject to certain conditions, including conditions relating to the legal matters discussed in this Section 13. See Section 15.

(a) Antitrust Considerations. Under the Hart-Scott Act and the rules that have been promulgated thereunder by the FTC, certain acquisition transactions may not be consummated unless the required information has been furnished to the Antitrust Division and the FTC, and the waiting period requirements have been satisfied. The purchase of Shares pursuant to the Offer is subject to such requirements. See Section 2.

Under the provisions of the Hart-Scott Act applicable to the purchase of Shares pursuant to the Offer, purchases cannot be made until the expiration of a 15-day waiting period after the date on which BNI furnishes the required information and documentary material to the Antitrust Division and the FTC with respect to the Offer, unless both the Antitrust Division and the FTC terminate

the waiting period prior thereto. BNI delivered a Notification and Report Form under the Hart-Scott Act prior to 5:00 P.M., Eastern Standard Time, on December 20, 1982 to both the FTC and the Antitrust Division, and, accordingly, BNI believes that the waiting period under the Hart-Scott Act applicable to the Offer will expire at 11:59 P.M., New York City Time, on Tuesday, January 4, 1983. However, because funding for certain federal agencies, including the FTC and the Department of Justice, lapsed, the Premerger Notification Office of the Bureau of Competition of the FTC advised BNI of its position that the waiting period under the Hart-Scott Act would not commence until the first business day after funding is restored. Prior to the expiration of the waiting period, the FTC or the Antitrust

Division may extend the waiting period by requesting additional information or documentary material relevant to the Offer from BNI. If such request is made, the waiting period will be extended for an additional period of ten days following the date of substantial compliance with such request. Only one extension of the waiting period is authorized by the rules promulgated under the Hart-Scott Act. Thereafter, such waiting period can be extended only by court order.

If the Purchaser's acquisition of Shares is delayed pursuant to a request by the Antitrust Division or the FTC for additional information or documentary material pursuant to the Hart-Scott Act, the Purchaser may, but need not, extend the Offer and, in any event, the purchase of and payment for Shares by the

Purchaser must be deferred as aforesaid. Any extension of the waiting period under the Hart-Scott Act or any resulting extension of the Offer will not give rise to any withdrawal rights not otherwise provided for by applicable law. See Sections 1 and 3.

The Antitrust Division and the FTC frequently scrutinize the legality under the antitrust laws of transactions such as the Purchaser's acquisition of Shares pursuant to the Offer. At any time before or after the consummation of any of such transactions, the Antitrust Division or the FTC could take such action under the antitrust laws as it deems necessary or desirable in the public interest, including seeking to enjoin the transaction or seeking the divestiture of the Shares so acquired or the divestiture of substantial assets of the Company or Parent.

It is not possible to predict whether a challenge to the Offer on antitrust grounds will be made or, if such challenge were made, what the result would be. The Purchaser believes that its acquisition of Shares pursuant to the Offer will not substantially lessen competition in any line of commerce and, accordingly, that any challenge on antitrust grounds should not prevent the consummation of the Offer.

(b) State Takeover Laws. Various states have adopted so-called takeover laws purporting to apply to offers to acquire shares of corporations which are incorporated or have substantial assets, stockholders, principal executive offices, employees and/or principal places of business therein. To the extent that any state takeover statute purports to apply to the Offer, the Purchaser

believes that such statute conflicts with federal law and constitutes an unreasonable burden on interstate commerce. In this regard on June 23, 1982, the Supreme Court of the United States in Edgar v. Mite Corp. held that the Illinois Business Takeover Act was unconstitutional. The Purchaser believes that the reasoning and holding in such decision applies to the state takeover laws referred to below.

The Purchaser has not complied with any state takeover laws. Based on publicly-available information with respect to the Company, the Purchaser believes that the state takeover statutes of Delaware, Louisiana, Oklahoma and Utah may purport to apply to the Offer. The Purchaser is commencing lawsuits in federal district courts in each of those states seeking a declaratory judgment

that the takeover law of such state is unconstitutional and seeking an injunction against its enforcement in connection with the Offer.

Based on publicly-available information regarding the Company, the Purchaser does not believe that the provisions of any other state takeover statutes purport to apply to the Offer. Should any person seek to apply any such law to the Offer, the Purchaser will take such action as then appears desirable, and currently expects that it will contest the validity of such statute in appropriate court proceedings.

In the event it is asserted that any state takeover statute is applicable to the Offer and a court of competent jurisdiction determines that such statute is valid as applied to the Offer, the Purchaser and BNI might be required

to file certain information with, or receive approvals from, the relevant state authorities, and the Purchaser might be unable to purchase or pay for Shares tendered pursuant to the Offer or be delayed in continuing or consummating the Offer. In such case, the Purchaser may not be obligated to accept Shares for payment. See Section 15.

(c) Federal Leases. According to the Company's 1981 10-K, the Company holds leases, or interests in leases, covering coal deposits in Utah and North Dakota. BNI believes that some or all of these leases may be located on federal lands subject to the Mineral Lands Leasing Act of 1920, as amended (the "Leasing Act"). Section 2(c) of the Leasing Act (30 U.S.C. §202) provides in part:

> No company or corporation operating a common-carrier railroad

> shall be given or hold a permit or lease under the provisions of this act for any coal deposits except for its own use for railroad purposes...

In addition, 30 U.S.C. §184(h) provides in part:

> If any interest in any lease is owned, or controlled, directly or indirectly, by means of stock or otherwise, in violation of any provisions of this chapter, the lease may be cancelled, or the interest so owned may be forfeited, or the person so owning or controlling the interest may be compelled to dispose of the interest, in any appropriate proceeding instituted by the Attorney General...

On December 7, 1982, the Secretary of the Interior announced that the Department of the Interior will halt future leasing of federal coal deposits to energy firms which are corporate affiliates of common-carrier railroads. This announcement followed the issuance of a legal opinion by the Solicitor of the Department of the Interior recommending that, although the language of

Section 2(c) is ambiguous, and notwithstanding the Interior Department's previous interpretation of Section 2(c) as excluding corporate affiliates of common-carrier railroads from the scope of that Section's prohibition, the Interior Department should prospectively change its interpretation of Section 2(c) to include such corporate affiliates within the scope of the prohibition. The announcement stated that a reason for the change in interpretation was to achieve a unified Administration policy. (The Antitrust Division of the Department of Justice had expressed disagreement with the Interior Department's prior interpretation.) The release issued by the Secretary of the Interior also noted that both the Interior Department and the Antitrust Division of the Department of Justice have

for several years endorsed the repeal of Section 2(c) of the Leasing Act.

BNI believes that, if pursuant to the Offer or otherwise, the Company becomes a corporate affiliate of BNI for these purposes, the current Secretary of the Interior would not approve the grant of additional leases of coal deposits on federal land to the Company. Further, there can be no assurance that there will not be a challenge through court proceedings or otherwise to the legality of BNI's becoming an affiliate of the Company while the Company holds federal coal leases, or that BNI or the Company would prevail in the event of such a challenge.

BNI is advising the Interior Department and the Department of Justice of its view that Section 2(c) is inapplicable to the Offer and that if those

agencies disagree with this view, BNI will discuss with those agencies mechanisms to resolve their concerns, including hold separate arrangements to prevent corporate control by BNI over the Company's federal coal leases or possible divestiture under commercially reasonable conditions to qualified lessees. BNI cannot predit the outcome of any such discussions or whether a challenge would result in divestiture or forfeiture of the Company's existing leases of coal deposits on federal land. BNI is unable to estimate the value of these leases based on the information which is publicly available, although it would appear to BNI that such leases do not represent a material portion of the Company's overall business. The Company's 1981 10-K stated that there were no significant coal operations under way.

In addition, pursuant to the Leasing Act, subject to various exceptions, no corporation may hold or control oil and gas leases from the United States (or options therefor or interests therein) on more than 246,080 acres in the aggregate in any one state (other than Alaska, where the limit is higher), or coal leases on more than 46,080 acres in the aggregate in any one state and 100,000 acres in the aggregate in the entire United States. These laws further provide that the beneficial owner of more than 10% of the stock of a corporation is chargeable with a pro rata share of the acreage on which such corporation holds leases, options and interests.

Accordingly, if following the consummation of the Offer, BNI were to own beneficially more than 10% of the outstanding Shares, and if the combined

oil, gas and/or coal leases held by BNI and the Company (taking into account BNI's percentage ownership of the Company) were to exceed such maximum limitations, the aggregate holdings of BNI and the Company might have to be reduced or modified so as to avoid a forfeiture or divestiture of such leases or interests.

(d) United Kingdom. Publicly-available information indicates that one of the Company's subsidiaries is incorporated under the laws of England and is authorized by the United Kingdom Secretary of State for Trade to carry on in Great Britain specified classes of insurance business. The United Kingdom Insurance Companies Act of 1974 provides that no person shall become a "controller" (as defined below) of an insurance company authorized to carry on insurance business in Great Britain, unless such

person has served a notice giving prescribed particulars on the Secretary of State for Trade, and either the Secretary of State for Trade has indicated that he has no objection to such person's becoming a controller, or three months have elapsed without any such objection having been made. The Secretary of State for Trade may serve a notice of objection on such person if it appears to the Secretary that such person is not a fit and proper person to be a controller of the insurance company. The term "controller" as used in the Insurance Companies Act of 1974 would include BNI and the Chairman of the Board and President of BNI, both of whom have filed or will file the requisite notice with the Secretary of State for Trade.

14. Dividends and Distributions. If, on or after December 17, 1982, the

Company should split, combine or otherwise change the Shares or the capitalization of the Company, then, without prejudice to the Purchaser's rights under Section 15, the Purchaser, in its sole discretion, may make such adjustments in the purchase price and other terms of the Offer as it deems appropriate to reflect such split, combination or other change.

If, on or after December 17, 1982, the Company should declare any cash or stock dividend (other than regular quarterly cash dividends not in excess of $.37 per Share) or other distribution on, or issue any rights with respect to, the Shares payable or distributable to stockholders of record on a date prior to the transfer to the name of the Purchaser or its nominee or transferee on the Company's stock transfer records of the Shares purchased pursuant to the

Offer, then without prejudice to the Purchaser's rights under Section 15, (i) the purchase price per Share payable by the Purchaser pursuant to the Offer may be reduced by the amount of any such cash dividend or distribution and (ii) the whole or part of any such non-cash dividend, distribution or right to be received by the tendering stockholder will be required to be promptly remitted and transferred by each tendering stockholder to the Depositary for the account of the Purchaser, accompanied by appropriate documentation of transfer, and, pending such remittance or appropriate assurance thereof, the Purchaser will be entitled to all the rights and privileges as owner of any such non-cash dividend, distribution or right and may withhold the entire purchase price or deduct from the purchase price the

amount or value thereof, as determined by the Purchaser, in its sole discretion.

15. Certain Conditions of the Offer. Notwithstanding any other provision of the Offer, the Purchaser shall not be required to accept for payment or pay for tendered Shares, or may terminate or amend the Offer, or postpone the acceptance for payment or payment for Shares tendered, if, at any time on or after December 17, 1982 and prior to the acceptance for payment of any such Shares (whether or not any other Shares have theretofore been accepted for payment or paid for pursuant to the Offer), any of the following shall occur:

(a) there shall have been instituted or threatened or shall be pending any action or proceeding by or before any domestic or foreign

court or governmental, administrative or regulatory agency or authority (i) challenging the making of the Offer or the acquisition by BNI or the Purchaser of any Shares, directly or indirectly or otherwise directly or indirectly relating to the Offer, or (ii) otherwise affecting BNI or the Company or any of their respective subsidiaries or affiliates which, in the sole judgment of the Purchaser, is or may be adverse, or there shall be a subsequent development in any such action or proceeding which the Purchaser, in its sole judgment, considers to be adverse, to BNI, the Company or any of their respective subsidiaries or affiliates; or

(b) There shall have been any action taken, or any statute, rule,

regulation or order proposed, sought, promulgated, enacted, entered, enforced or deemed applicable to the Offer, by any state, federal or foreign government or any court, governmental, administrative or regulatory agency or authority, domestic or foreign, which may, in the sole judgment of the Purchaser, (i) result in a delay in or restrict the ability of BNI or the Purchaser to accept for payment or pay for some or all of the Shares which otherwise would be purchased or make the consummation of the Offer unduly burdensome to BNI or the Purchaser, (ii) render BNI or the Purchaser unable to accept for payment or pay for some or all of the Shares, (iii) make the acceptance for payment or payment for some or all of the

Shares illegal, (iv) require the divestiture by the Purchaser or any of its subsidiaries or affiliates of any Shares, or impose any limitation on any of them to own such Shares, (v) other than any hold separate arrangement or divestiture agreed to by BNI with respect to any federal coal leases, or interests therein, held by the Company referred to in Section 13 hereof, require the divestiture by BNI or any of its subsidiaries or affiliates of all or any portion of the business, assets or property of any of them, or of the Company or any of its subsidiaries or affiliates, or impose any limitation on any of them to conduct their respective businesses or own such assets or properties, (vi) impose material limitations on the ability

of the Purchaser or any of its subsidiaries or affiliates effectively to exercise full rights of ownership with respect to the Shares, including the right to vote the Shares purchased by it on all matters properly presented to the stockholders of the Company, or impose material limitations on the ability of BNI or any of its subsidiaries or affiliates effectively to control in any respect the business operations of the Company, BNI or any of their respective subsidiaries or affiliates, or (vii) otherwise adversely affect BNI, the Company or any of their respective subsidiaries or affiliates; or

(c) any change (or any development involving a prospective change) shall have occurred or been

threatened in the business, properties, assets, financial condition, operations, results of operations or prospects of the Company or any of its subsidiaries which, in the sole judgment of the Purchaser, is or may be materially adverse, or the Purchaser shall have become aware of any currently existing facts which, in the sole judgment of the Purchaser, have or may have material adverse significance with respect to the Company or the value of the Shares; or

(d) there shall have occurred (i) any general suspension of, or limitation on prices for or trading in, securities on the NYSE, (ii) a declaration of a banking moratorium by federal or state authorities or any suspension of payments in respect of banks or any limitation on

the extension of credit by lending institutions in the United States, (iii) a commencement of a war or armed hostilities or any other national or international calamity directly or indirectly involving the United States, (iv) a material change in the United States or any other currency exchange rates, or a suspension of, or limitation on, the markets therefor or (v) any limitation imposed by Federal, state or foreign authorities on the extension of credit by lending institutions which materially and adversely affects BNI or any of its subsidiaries or affiliates; or, in the case of any of the foregoing existing at the time of the commencement of the Offer, a material acceleration or worsening thereof; or

(e) the Company shall have (i) issued, sold, authorized or proposed the issuance of capital stock of any class (including Shares) or securities convertible into any such shares, or rights, warrants or options to acquire any such shares or other convertible securities, other than Shares issued upon the exercise, in accordance with the present terms thereof, of employee stock options outstanding on December 17, 1982, and Shares issued upon conversion of the Company's 13% convertible subordinated notes, (ii) issued, sold, authorized or proposed the issuance of, any other securities in respect of, or in lieu of, or in substitution for the Shares outstanding on December 17,

1982, (iii) purchased or otherwise acquired or proposed to purchase any outstanding Shares, (iv) declared or paid any dividend or distribution on the Shares (other than a quarterly cash dividend not in excess of $0.37 per Share at the normal time at which such dividends are declared and paid) or (v) authorized, recommended or proposed, or announced its intention to authorize, recommend or propose, any merger, consolidation, acquisition of assets, disposition of assets or any shares of capital stock, material change in its capitalization, sale of Shares by the Company's stockholders or any comparable event, not in the ordinary course of business, or taken any action to

implement any such transactions previously authorized, recommended, proposed or announced; or

(f) the Company or any of its affiliates shall have proposed or adopted any amendment to its Certificate of Incorporation or By-Laws; or

(g) a tender offer or exchange offer for some or all of the Shares is made, or publicly proposed to be made, or a merger or consolidation with, or acquisition of assets of, the Company is publicly proposed to be made by, another person, or the Purchaser shall have learned that (i) more than 5% of the outstanding Shares have been acquired, except for acquisitions for arbitrage purposes only, by another person or by a "group," as defined in Section

13(d)(3) of the Exchange Act or (ii) any new "group" is formed which beneficially owns more than 5% of the outstanding Shares; or

(h) BNI or any of its subsidiaries or affiliates shall have entered into a definitive agreement or announced an agreement or understanding for a merger or other business combination with the Company;

if, in the sole judgment of the Purchaser, in any such case, regardless of the circumstances (including any action or inaction by the Purchaser) giving rise to any such condition, such condition makes it inadvisable to proceed with the Offer and/or with such purchaser or payment.

The foregoing conditions are for the sole benefit of the Purchaser and may be asserted by the Purchaser

regardless of the circumstances giving rise to such condition or may be waived by the Purchaser in whole or in part at any time and from time to time in its sole discretion. Any determination by the Purchaser concerning the conditions described in this Section 15 shall be final and binding upon all parties.

16. Fees and Expenses. The Purchaser will not pay any fees or commissions to any broker, dealer or other person (other than the Dealer Manager as set forth below) for soliciting tenders of Shares pursuant to the Offer. Brokers, dealers, commercial banks and trust companies will be reimbursed by the Purchaser for customary mailing and handling expenses incurred by them in forwarding the Offer to Purchase and related materials to their customers.

Shearson/American Express Inc. has acted as financial advisor to the Purchaser and BNI and is acting as Dealer Manager in connection with the Offer. BNI has agreed to pay the Dealer Manager a fee of $350,000 upon commencement of the Offer and a fee of $0.12 per Share for each Share purchased pursuant to the Offer, provided that the aggregate fees payable to the Dealer Manager will not exceed $3 million. The Dealer Manager also will be reimbursed for its reasonable out-of-pocket expenses, including reasonable counsel fees. The Purchaser has agreed to indemnify the Dealer Manager against certain liabilities and expenses in connection with the Offer, including certain liabilities under the federal securities laws. BNI has unconditionally guaranteed the performance by the Purchaser of each of its obligations

to the Dealer Manager and the accuracy of the representations and warranties made by the Purchaser to the Dealer Manager.

D.F. King & Co., Inc. has been retained as Information Agent in connection with the Offer. The Information Agent may contact holders of Shares by Mail, telephone, telex, telegraph and personal interview and may request brokers, dealers and other nominee stockholders to forward materials relating to the Offer to beneficial owners. Customary compensation will be paid for such services in addition to reimbursement for reasonable out-of-pocket expenses and indemnification against certain liabilities in connection with the Offer.

The Depositary will receive reasonable and customary compensation for its

services in connection with the Offer, will be reimbursed for its reasonable out-of-pocket expenses and will be indemnified against certain liabilities in connection therewith.

17. Miscellaneous. The Offer is not being made to (nor will tenders be accepted from or on behalf of) holders of Shares residing in any jurisdiction in which the making or acceptance thereof would not be in compliance with the securities, "blue sky" or other laws or such jurisdiction. In any jurisdiction where securities, "blue sky" or other laws require the Offer to be made by a licensed broker or dealer, the Offer shall be deemed to be made on behalf of the Purchaser by one or more registered brokers or dealers licensed under the laws of that jurisdiction. No person has been authorized to give any

information or make any representation on behalf of the Purchaser not contained in the Offer and, if given or made, such information or representation may not be relied upon as having been authorized.

Pursuant to Rule 14d-3 of the General Rules and Regulations under the Exchange Act, a Schedule 14D-1 with respect to the Offer has been filed with the Commission by the Purchaser. That Schedule, which furnishes certain additional information, may be examined and copies may be obtained at the same places and in the same manner as set forth with respect to the information concerning the Company in Section 8 (except that it will not be available at the regional offices of the Commission).

R-H HOLDINGS CORPORATION

SCHEDULE A
DIRECTORS AND EXECUTIVE OFFICERS OF THE PURCHASER AND BNI

The name, business or residence address, present principal occupation or employment and material occupations, positions, offices or employments for the past five years (including name, principal business and address of any corporation in which such occupations or employments are or were carried on) of each director and executive officer of BNI and the Purchaser are set forth below. All of the executive officers and directors of BNI and of the Purchaser are citizens of the United States of America. The business address of each of the persons named below is 1111 Third Avenue, Seattle, Washington 98101, unless otherwise noted. Unless otherwise indicated, the person has been employed during the five-year period with the same organization in which he or she is presently employed.

BNI
Directors

Name, Business or Residence Address and Title	Present Principal Occupation or Employment and Material Occupations, Positions, Offices or Employment During the Past Five Years
ALWORTH, JR., ROYAL D., Director..... 1605 Alworth Building Duluth, Minnesota	Chairman of the Board of Oneida Realty Company, Duluth, Minnesota (realty); Director of McGraw Edison Company (lighting and electrical products) and Atlanta LaSalle Corporation (sporting goods).
BARNES, ZANE E., Director..... 112 North Fourth Street St. Louis, Missouri	President and Chief Executive Officer of Southwestern Bell Telephone Company, St. Louis, Missouri (telephone and communications services); Director of Alton Packaging Corporation, Reading & Bates Corporation (pipeline construction), Centerre Bancorporation, General American Life Insurance Company, INTERCO, Inc. (general retail merchandising and manufacturers of apparel, footwear and home furnishings) and Southwestern Bell Telephone Company.
BRESSLER, RICHARD M., Chairman of the Board, President and Chief Executive Officer of BNI.....	Chairman of the Board, President and Chief Executive Officer of BNI; held various positions with Atlantic Richfield Company from 1975 until 1980 (petroleum and natural gas); Director of First Bank System, Inc., Honeywell Inc. and Federated Department Stores; Trustee of Penn Mutual Life Insurance Company.
DAVISON, DANIEL P., Director..... 45 Wall Street New York, New York 10005	Chairman of the Board and President, United States Trust Company of New York, New York, New York (banking); held various positions with United States Trust Company since 1976; Director of Northwestern Portland Cement Co., Discount Corporation (underwriter, distributor and dealer in governmental securities) and The Atlantic Companies.

Name, Business or Residence Address and Title	Present Principal Occupation or Employment and Material Occupations, Positions, Offices or Employment During the Past Five Years
DEACY, JR., THOMAS E., Director..... 1102 Grand Avenue Kansas City, Missouri 64106	Attorney at Law, Partner, Deacy and Deacy, Kansas City, Missouri.
DREXEL, WALTER A., Director..... 176 East Fifth Street St. Paul, Minnesota 55101	President and Chief Operating Officer of Burlington Northern Railroad Company, St. Paul, Minnesota, a subsidiary of BNI; held various positions with Atlantic Richfield Company from 1975 to 1978; Vice President of Anaconda Copper Company from 1978 until 1981. Director of New Mexico and Arizona Land Company.
GARST, MARY, Director..... 218 South Fifth Street Coon Rapids, Iowa	Cattle Manager of The Garst Company, Coon Rapids, Iowa (farming and agricultural enterprises); Director of International Harvester Company (agricultural, industrial, construction equipment; trucks and recreational vehicles) and Northwestern Bell Telephone Company.
GRAYSON, RICHARD C., Director..... 176 East Fifth Street St. Paul, Minnesota 55101	Chairman of the Board and Chief Executive Officer of Transportation Group Burlington Northern Railroad Company, St. Paul, Minnesota, a subsidiary of BNI. Vice Chairman and President, Transportation Division, BNI from 1980 to 1981; Chairman of the Board and President of St. Louis-San Francisco Railway Company from 1973 until 1980. Director of Forth Worth and Denver Railway Company, a subsidiary of Burlington Northern Railroad, Centerre Bancorporation, Alton Packaging Corporation, Laclede Gas Company, New Mexico and Arizona Land Company and General American Life Insurance Company.

Name, Business or Residence Address and Title	Present Principal Occupation or Employment and Material Occupations, Positions, Offices or Employment During the Past Five Years
HAYFORD, WARREN J., Director..... 401 North Michigan Avenue Chicago, Illinois 60611	President and Chief Operating Officer of International Harvester Company, Chicago, Illinois (agricultural, industrial, construction equipment; trucks and agricultural vehicles) from 1979 until March 1982; President of Continental Can Company and Executive Vice President and Director of Continental Group from 1975 until 1979 (packaging products and machinery; financial services; insurance; transmission and distribution of natural gas); Director of Norton Company (industrial machinery).
HUTCHINSON, PEMBERTON, Director..... 2500 Fidelity Building Philadelphia, Pennsylvania 19109	President and Chief Operating Officer of Westmoreland Coal Company, Philadelphia, Pennsylvania (coal production and marketing); President of General Coal Company from 1975 until 1979; Director of Westmoreland Coal Company, Teleflex, Inc. (design, manufacture and marketing of mechanical and electromechanical control systems; hydraulic steering systems) and Girard Co. (one-bank holding company).
MENK, LOUIS W., Director.....	Chairman of the Board of Burlington Northern from 1978 until 1981; Chairman of the Board and Chief Executive Officer of Burlington Northern from 1971 to 1978; Director of ASARCO Incorporated (metals), Fort Worth and Denver Railway Company, a subsidiary of Burlington Northern Railroad, General Mills, Inc. (diversified consumer products), International Harvester Company (agricultural, industrial, construction equipment, trucks and recreational vehicles), and Stephens Inc.

Name, Business or Residence Address and Title	Present Principal Occupation or Employment and Material Occupations, Positions, Offices or Employment During the Past Five Years
O'LEARY, THOMAS H., Director, Vice Chairman of the Board.....	Vice Chairman of the Board of BNI; President and Director of Missouri Pacific Corporation, St. Louis, Missouri (railroad holding company), from 1974 until August 1982; Director of INTERCO, Inc., Mercantile Bancorporation, Inc. and Mercantile Trust Company.
PARKER, PAUL L., Director..... 9200 Wayzata Boulevard Minneapolis, Minnesota 55440	Executive Vice President and Chief Administrative Office of General Mills, Inc., Minneapolis, Minnesota (diversified consumer products company); Director of Equitable of Iowa.
ROCKWELL, BRUCE M., Director..... 17th and Champa Streets Denver, Colorado 80202	Chairman of the Board of Colorado National Bankshares, Inc. and Chairman of the Board, Colorado National Bank of Denver (bank holding company and banking); Director of Colorado National Bankshares, Inc.
RYAN, GERALD C., Director..... Highway 2 East Grand Forks, Minnesota	President of Ryan Potato Company, East Grand Forks, Minnesota; Director of First Bank System, Inc. and Terra Chemical International Inc.
STEIN, ELLIOT H., Director..... 515 Olive Street St. Louis, Missouri	President of Scherck, Stein & Franc, Inc., St. Louis, Missouri (investment brokers); Director of Angelica Corporation (institutional uniforms and career apparel; hospital textile rental), City Investing Company, General American Life Insurance Company, General Dynamics Corporation (diversified company with electronics, aerospace, marine and communications divisions), General Steel Industries, Inc., Home Group Inc. (insurance), Laclede Gas Company, New Mexico and Arizona Land Company, Ralston Purina Company (poultry and livestock feeds; pet foods), and West Indies Sugar Company.

Name, Business or Residence Address and Title	Present Principal Occupation or Employment and Material Occupations, Positions, Offices or Employment During The Past Five Years
WILLIAMS, JR., DAVID R., Director..... 6600 Yale Tulsa, Oklahoma	Chairman and President of The Resource Sciences Corporation, Tulsa, Oklahoma (engineering); Director of The Williams Companies (owner and operator of common carrier pipeline system; oil and gas production and exploration).

BNI

EXECUTIVE OFFICERS

Name, Present Position With BNI	Business Experience During Last 5 Years. Directorships in Public Corporations
*RICHARD M. BRESSLER, Chairman of the Board, President, Chief Executive Officer and Director	
*THOMAS H. O'LEARY, Vice Chairman of the Board	
JOHN C. ASHTON, Senior Vice President-Corporate Affairs.....	Vice President and Secretary, July, 1974 to March, 1981; Vice President Corporate Affairs, April, 1981 to May, 1981, and Senior Vice President Corporate Affairs, May, 1981 to date, BNI.
DON WOOD, Senior Vice President-Strategic Planning.....	Manager, Planning, June, 1977 to February, 1979; Manager, Planning and Evaluation, February, 1979 to October, 1980, Vice President, Planning and Control, February, 1980 to April, 1981, Anaconda Copper, a subsidiary of Atlantic Richfield Company; Senior Vice President, Strategic Planning, April 1981 to date, BNI.

*See information listed under Directors of BNI in this Schedule A.

Name, Present Position With BNI	Business Experience During Last 5 Years. Directorships in Public Corporations
FRANK S. FARRELL, Senior Vice President-Law and Secretary.....	Vice President-Law, August, 1974 to May, 1981; Senior Vice President-Law and Secretary, May 1981 to date, BNI.
JOHN B. PARRISH, Senior Vice President and Chief Financial Officer.....	Vice President of Finance, October 1976 to May 1979; Vice President and General Manager of Consumer Products Operations, May 1981 to July 1981, General Electric Do Brasil, Sao Paulo, Brazil (electrical manufacturing company); Vice President-Financial Services, July 1981 to May 1982, Vice President and Treasurer, May 1982 to November 1982, Senior Vice President and Chief Financial Officer, November 1982 to date, BNI.
DAVID F. YLKANEN, Senior Vice President-Human Resources.....	Director Organization and Manpower Planning prior to January, 1975; Director Personnel, May, 1975 to October, 1975; Assistant Vice President-Personnel, November, 1975 to January, 1977; Vice President-Personnel, January, 1977 to May, 1981; Senior Vice President Human Resources, May, 1981 to date, BNI.
FRANK BOYLE, Treasurer.....	Treasurer, June 1977 to October 1981, Vice President and Treasurer, October, 1981 to June 1982, United States Filter Corporation (diversified engineering, chemical, pollution control equipment and steam boiler manufacturer, now Ashland Technologies, a subsidiary of Ashland Oil); Deputy Treasurer June, 1982 to November, 1982, Treasurer, November, 1982 to date, BNI.
BRUCE L. ENNIS, President, Meridian Land & Mineral Company, a subsidiary of BNI.....	Law partner prior to January, 1975 to December, 1978. Moulton, Bellingham, Longo & Mather; President. December, 1978 to January, 1981, Montco; Vice President (coal and minerals), January, 1981 to June, 1981, BNI; President, June, 1981 to date, Meridian Land & Mineral Co., a subsidiary of BNI.

Name, Present Position With BNI	Business Experience During Last 5 Years. Directorships in Public Corporations
*RICHARD C. GRAYSON, President and Chief Executive Officer, Burlington Northern Railroad Company, a subsidiary of BNI.....	Project Manager June, 1976 to September, 1977, CONOCO, INC. Division Manager, September, 1977 to March 1981, CONOCO INC.; Vice President, April 1981 to May 1981, BNI; President, May 1981 to date, Milestone Petroleum Inc., a subsidiary of BNI.
JOHN F. GREENE, II, President, Milestone Petroleum Inc., a subsidiary of BNI.....	President and Chief Executive Officer, December 1973 to date, BN Transport Inc., a subsidiary of BNI.
CHARLES A. McGEE, President and Chief Executive Officer BN Transport Inc., a subsidiary of BNI....	Group Managing Partner prior to February 1976, Coopers & Lybrand; Consultant, February 1978 to September 1981, self-employed; Chairman, September 1982 to date Glacier Park Company, a subsidiary of BNI.
J.S. McMENAMIN, Chairman and Chief Executive Officer Glacier Park Company, a subsidiary of BNI.....	President prior to January 1977 to March 1981; Chairman of the Board, President, and Chief Executive Officer, March 1981 to date, Plum Creek Inc., a subsidiary of BNI.
FRED A. WINEGAR, Chairman of the Board, President and Chief Executive Officer Plum Creek Inc., a subsidiary of BNI.....	

*See information listed under Directors of BNI in this Schedule A.

THE PURCHASER

Directors and Executive Officers

Name	Title
*RICHARD M. BRESSLER....	Chairman, Chief Executive Officer and Director.
*THOMAS H. O'LEARY.....	Vice President, Secretary and Director.

*See information listed under Directors of BNI in this Schedule A.

Facsimile copies of the Letter of Transmittal will be accepted. The Letter of Transmittal and certificates for Shares should be sent by each stockholder of the Company or his broker, dealer, bank or trust company to the Depositary as follows:

THE DEPOSITARY IS:

FIDELITY UNION BANK

By Mail:	**By Hand:**
P.O. Box 1380 Newark, New Jersey 07101	Stock Tranfer Department 3rd Floor 10 Bank Street Newark, New Jersey

Any questions or requests for assistance should be directed to the Information Agent, the Dealer Manager or your broker, dealer, commercial bank or trust company.

THE INFORMATION AGENT IS:

D.F.KING & CO., INC.

One North LaSalle St.
Chicago, Illinois 60602
(312) 236-5881
(Call Collect)

60 Broad Street
New York, New York 10004
(212) 269-5550
(Call Collect)

400 Montgomery Street
San Francisco, California 94104
(415) 788-1119
(Call Collect)

THE DEALER MANAGER FOR THE OFFER IS:

SHEARSON/AMERICAN EXPRESS INC.

Two World Trade Center
One Hundred Fifth Floor
New York, New York 10048
(212) 321-6721
(Call Collect)

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14D-9
SOLICITATION/RECOMMENDATION STATEMENT
PURSUANT TO SECTION 14(d)(4)
OF THE SECURITIES EXCHANGE ACT OF 1934

THE EL PASO COMPANY
(Name of Subject Company)

THE EL PASO COMPANY
(Name of Person(s) Filing Statement)

Common Stock, Par Value $3.00 per Share
(Title of Class of Securities)

283362 10 1
(CUSIP Number of Class of Securities)

CARL M. JONES, ESQ.
Secretary
2727 Allen Parkway
The El Paso Company
Houston, Texas 77019
Telephone: (713) 525-9400

(Name, address and telephone number of person authorized to receive notice and communications on behalf of the person(s) filing statement)

Copies to:

JAMES H. FOGELSON, ESQ.
Wachtell, Lipton, Rosen & Katz
299 Park Avenue
New York, NY 10171
Telephone (212) 371-9200

ARNOLD H. TRACY, ESQ.
Mudge, Rose, Guthrie & Alexander
20 Broad Street
New York, NY 10005
Telephone (212) 422-6767

Item 1. Security and Subject Company.

The title of the class of equity securities to which this Statement relates is Common Stock, par value $3.00 per share ("Shares") of the El Paso Company, a Delaware corporation (the "Company"). The address of the principal executive offices of the Company is 2727 Allen Parkway, Houston, Texas 77019.

Item 2. Tender Offer of the Bidder.

This Statement relates to the tender offer (the "Burlington Northern Offer") of R-H Holdings Corporation (the "Bidder"), a Delaware corporation and a wholly-owned subsidiary of Burlington Northern Inc. ("Burlington Northern"), a Delaware corporation, disclosed in a Tender Offer Statement on Schedule 14D-1 dated December 20, 1982 (the "Schedule 14D-1"), to purchase up to 25,100,000 Shares for cash at $24 net per Share.

The Schedule 14D-1 states that the principal executive offices of the Bidder and Burlington Northern are located at 1111 Third Avenue, Seattle, Washington 98101.

Item 3. Identity and Background

(a) The name and business address of the Company, which is the person filing this Statement, are set forth in Item 1 above.

(b) Certain contracts, agreements, arrangements or understandings between the Company and certain of its directors and executive officers are described on pages 8 through 15 of the Company's Proxy Statement dated March 12, 1982 (the "Proxy Statement") for its Annual Meeting of Stockholders held on April 27, 1982, which pages are filed herewith as Exhibit 1 and incorporated herein by reference.

Pursuant to an agreement dated as of July 7, 1978, between the Company and Howard Boyd, a director and formerly the Chairman of the Board of the Company, Mr. Boyd is obligated to render services to the Company as independent contractor until his death with respect to certain projects commenced during his tenure as an officer of the Company. In consideration for such services, the Company agreed to pay Mr. Boyd or his beneficiaries $60,000 per annum, adjusted for inflation, for so long as Mr. Boyd or his then present spouse shall live. A copy of such agreement is attached hereto as Exhibit 2 and incorporated herein by reference.

On December 23, 1982, the Board of Directors authorized the Company to enter into employment agreements with Richard S. Morris, Executive Vice

President and a director, and Michael B. Bracy, Senior Vice President, of the Company, which will provide for their continued employment with the Company in their current positions and at not less than their current salary levels for a period of five years. Such agreements shall provide that the employee shall remain entitled to benefits under such agreements if employment is terminated by him upon the occurrence of a significant change in his responsibilities or duties or a reduction in his total compensation or as a result of a change of control of the Company and a change in circumstances thereafter significantly affecting his position, he is unable to exercise the authorities or duties attached to his position.

On December 23, 1982, the Board of Directors also authorized an amendment

to the Company's Deferred Compensation Plan to provide that for the purposes of such Plan a participant shall be deemed to have retired at the instance of the Company if his duties as a director, officer or employee of the Company have been diminished or curtailed by the Company in any material respect.

Except as set forth in the preceding four paragraphs, to the best knowledge of the Company, there are no contracts, agreements, arrangements or understandings or any actual or potential conflicts of interest between the Company or its affiliates, and (i) the Company, its executive officers, directors or affiliates or (ii) the Bidder, Burlington Northern or their respective executive officers, directors or affiliates.

Item 4. The Solicitation or Recommendation.

(a) At a meeting held on December 23, 1982, the Board of Directors of the Company by a unanimous vote of all directors present determined that the Burlington Northern Offer is inadequate and not in the best interests of the Company or its stockholders. The Board of Directors strongly recommends that the Burlington Northern Offer be rejected by the Company's stockholders.

Because the Board believes that partial offers such as the Burlington Northern Offer are so inequitable to stockholders, it has authorized the payment to all stockholders of a dividend of one share of a new series of 8% cumulative convertible preferred stock for each 20 outstanding Shares. The preferred stock will have a stated value of

$25 per share. Each share of preferred stock will be immediately convertible into one Share, will have one vote and, except as indicated below, will vote as a single class with the Shares. The preferred stock will have a liquidation preference of $25 per share and will be redeemable at the Company's option after five years at $25 per share. In order to protect all stockholders against partial offers and particularly in this case against the anticipated failure by Burlington Northern to make a cash offer for all the outstanding Shares if it becomes a 25% holder of the Company's voting stock, any business combination between the Company and a 25% stockholder at a price below the highest price paid by the 25% stockholder for any of its Shares or in which consideration other than cash is paid will

require the approval of the holders of 90% of the outstanding preferred stock. The preceding requirements will be inapplicable in the event that the transaction being considered is approved by a majority of the directors of El Paso who were directors prior to the time that the holder acquired his 25% position (the "Continuing Directors"). If, within 10 days after becoming a 25% holder, the holder does not offer to acquire for cash the remaining Shares at a price at least equal to the highest price paid by it for any of its Shares, then the holders of the preferred stock, other than the 25% holder, will be entitled to elect one-third of the El Paso directors unless a majority of the Continuing Directors otherwise determines. The stock dividend will be payable on January 21, 1983 to record holders of Shares as of January 7, 1983.

A form of a letter to stockholders communicating the Board's recommendation and a press release relating to such recommendation are filed as Exhibits 3 and 4 hereto, respectively, and are incorporated herein by reference.

(b) In reaching its conclusions described in paragraph (a) above, the Board of Directors considered a number of factors, including the following:

(i) The Board's familiarity with the business of the Company and its prospects and financial condition.

(ii) A presentation by the Company's management which reviewed, among other things, the historical and current financial condition, results of operations, and prospects of the Company.

(iii) The advice of Merrill Lynch White Weld Capital Markets

Group ("Merrill Lynch") that the $24 per share to be paid pursuant to the Burlington Northern Offer is inadequate from a financial point of view. Merrill Lynch has acted as financial advisor to the Company for a considerable period of time and has been intimately involved in the Company's financial and strategic planning.

(iv) Current economic, monetary and market conditions.

(v) The fact that the Shares have traded in substantial volume significantly above $24 per share during the past year.

(vi) The following uncertainties, among others, relating to the Burlington Northern Offer:

- The Burlington Northern Offer is limited to 25,100,000 Shares, or

approximately 50.7% of the issued and outstanding Shares, and Burlington Northern has disclosed no definite plans to acquire the remaining equity interest in the Company. Although Burlington Northern intends to consider other transactions for obtaining some or all of the outstanding Shares, it stated that a decision to make such an acquisition would be conditioned upon a number of factors and that it has not presently determined at what time and on what terms such transactions would occur.

- Those stockholders whose Shares are not purchased pursuant to the Burlington Northern Offer, including stockholders whose Shares are subject to proration, might remain minority stockholders for an

indefinite period of time and the value of their investment in the Company could be adversely affected.

- By virtue of Burlington Northern's complex and restrictive financing arrangements for the Burlington Northern Offer, Burlington Northern may be forced to cause the Company to engage in transactions that would not be in the best interests of the remaining Company stockholders in order to carry its loans or in order substantially to increase its Investment above 51.8%.

(vii) The advice of the Company's legal counsel that the Burlington Northern offer raises serious legal questions under the federal securities laws as well as under other

federal and state laws. Counsel reviewed with the Board the desirability of resolving these questions by taking such action as deemed necessary and appropriate, including commencing litigation. Based upon that advice, the Board of Directors authorized the filing in appropriate jurisdictions of all necessary and appropriate complaints and requests for hearings under the federal securities laws and such other laws as the management of the Company, with the advice of counsel, determines are appropriate. The Board has instructed counsel to proceed promptly with these matters and to seek the earliest practicable resolution of such issues.

Item 5. Persons Retained, Employed or to be Compensated.

The Company has retained Merrill Lynch to act as its financial advisor in connection with the Burlington Northern Offer and other matters that may arise in connection therewith. For its services as financial advisor, Merrill Lynch will receive a fee of $250,000 (plus expenses including counsel fees) plus additional fees (a) equal to .3% of the aggregate value of certain sales of assets or subsidiary stock transactions, (b) equal to .3% of the aggregate consideration paid in certain purchases of Shares by third parties and in purchases of Shares by Burlington Northern at a price in excess of $24 per Share, (c) determined by negotiations between the Company and Merrill Lynch in the event that (i) neither Burlington Northern nor

any other party acquires more than 10% of the outstanding Shares, (ii) less than 25,100,000 Shares are acquired pursuant to the Burlington Northern offer at $24 per share or less, or (iii) some other form of transaction is entered into or (d) equal to $.05 per Share for each Share acquired by the Company. In addition, the Company has agreed to indemnify Merrill Lynch against certain liabilities arising out of its engagement. L. Emery Katzenbach, a director of the Company, is a Vice President of Merrill Lynch, Pierce, Fenner & Smith Incorporated of which Merrill Lynch is a division.

The Company has also retained Morrow & Co. and Hill and Knowlton, Inc. to render public relations advisory and other services to the Company. The Company will pay such firms reasonable

and customary charges for their services and will reimburse them for their reasonable expenses.

Neither the Company nor any person acting on its behalf currently intends to employ, retain or compensate any other person to make solicitations or recommendations to stockholders in connection with the Burlington Northern Offer.

Item 6. Recent Transactions and Intent with Respect to Securities.

(a) To the best of the Company's knowledge, no transactions in the Shares have been effected during the past 60 days by the Company or by any executive officer, director, affiliate or subsidiary of the Company, except as follows:

(i) On December 3, 1982, Travis H. Petty, Chairman of the Board, President and Chief Executive

Officer of the Company transferred 115 Shares as gifts to his children and grandchildren.

(ii) On December 13, 1982, Howard Boyd, a director of the Company, transferred 200 Shares as gifts to his children.

(iii) On November 18, 1982, the mother of David F. Mackie, Senior Vice President of the Company, sold 800 Shares in the open market at $17 3/8 per Share. According to information filed with the Securities and Exchange Commission, Mr. Mackie disclaims any beneficial interest in securities held by his mother.

(iv) During the past 60 days, the Trustees for Fund A of the Company's Employee Savings Plan and for the Company's Employees Stock

Ownership Plan purchased in the aggregate 368,716 shares for the benefit of the participants in such plans. All of the executive officers of the Company (including three directors who are also executive officers of the company) are participants in such plans. For further information with respect to such plans, see page 9 of the Proxy Statement.

(b) To the best of the Company's knowledge, none of its executive officers, directors, affiliates or subsidiaries presently intends to tender into the Burlington Northern Offer any Shares which are held of record or beneficially owned by such persons.

Item 7. Certain Negotiations and Transactions by the Subject Company.

(a) Except as indicted in paragraph (b) below, no negotiation is underway or

is being undertaken by the Company in response to the Burlington Northern Offer which relates to or would result in (1) an extraordinary transaction, such as a merger or reorganization, involving the Company or any of its subsidiaries; (2) a purchase, sale or transfer of a material amount of assets by the Company or any of its subsidiaries; (3) a tender offer for or other acquisition of securities by or of the Company; or (4) any material change in the present capitalization or dividend policy of the Company.

(b) At the meeting of the Board of Directors held on December 23, 1982, the Board considered and reviewed the desirability of exploring and investigating certain types of transactions, such as repurchases of Shares, the public or private sale of equity or

other securities of the Company, a business combination between the Company and another company, the acquisition of the entire Company or of one or more of its significant business segments by another company, a joint venture between the Company and one or more other companies, the acquisition by the Company of all or part of the business of another company, the disposition of a portion of the assets of the Company, a complete or partial liquidation of the Company or the declaration of an extraordinary dividend. After considerable discussion, the Board resolved that it was desirable and in the best interests of the Company and its stockholders to explore and investigate, with the assistance and advice of Merrill Lynch, transactions of such nature, although the Board noted that the initiation or continuation of

such activities may be dependent upon Burlington Northern's future actions with respect to the Burlington Northern Offer. There can be no assurance that these activities will result in any transaction being recommended to the Board of Directors or that any transaction which is recommended will be authorized or consummated. The effectuation of any transaction of the type referred to in this Item 7(b) may have an impact on the Burlington Northern offer.

At such meeting of the Board of Directors, the Board also adopted a resolution relating to the need for confidentiality with respect to the parties to, and possible terms of, any transactions or proposals of the type referred to above during the continuation of negotiations with respect to any such transaction.

Item 8. Additional Information to be Furnished.

At its December 23, 1982 meeting, the Board of Directors adopted an amendment to the Company's By-laws with respect to shareholder action by written consent. A copy of such amendment is filed herewith as Exhibit 5 and incorporated herein by reference.

Item 9. Material to be filed as Exhibits.

Exhibit 1 - Copy of pages 8-15 of the Proxy Statement.

Exhibit 2 - Agreement, dated as of July 7, 1978, between the Company and Howard Boyd.

Exhibit 3 - Form of letter dated December 23, 1982 being mailed to stockholders of the Company.

Exhibit 4 - Form of press release being issued by the Company on December 23, 1982.

Exhibit 5 - Amendment to the Company's By-laws adopted on December 23, 1982.

Exhibit 6 - Materials being sent to participants in the Company's Employee Savings and Employee Stock Ownership Plans.

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this Statement is true, complete and correct.

Date: December 23, 1982

THE EL PASO COMPANY

By.....
Executive Vice President

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14D-9
SOLICITATION/RECOMMENDATION STATEMENT
PURSUANT TO SECTION 14(d) (4)
OF THE SECURITIES EXCHANGE ACT OF 1934
(Amendment No. 1)

THE EL PASO COMPANY
(Name of Subject Company)

THE EL PASO COMPANY
(Name of Person(s) Filing Statement)

Common Stock, Par Value $3.00 per Share
(Title of Class of Securities)

283362 10 1
(CUSIP Number of Class of Securities)

Carl M. Jones, Esq.
Secretary
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Telephone: (713) 525-9400
(Name, address and telephone number of person authorized to receive notice and communications on behalf of the person(s) filing statement)

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This Amendment No. 1 amends and supplements the Solicitation/Recommendation Statement on Schedule 14D-9, dated December 23, 1982, filed by the El Paso Company, a Delaware corporation (the "Company"), in connection with the tender offer (the "Burlington Northern Offer") of R-H Holdings Corporation (the "Bidder"), a Delaware corporation and a wholly-owned subsidiary of Burlington Northern Inc. ("Burlington Northern"), a Delaware corporation, disclosed in a tender offer statement on Schedule 14D-1, dated December 20, 1982, to purchase up to 25,100,000 shares of Common Stock, par value $3.00 per share ("Shares"), of the Company.

Item 3. Identity and Background.

In addition to Messrs. Petty and Holik, the following executive officers of the Company were, at various times

during May and November, 1982, designated as participants in the Company's Deferred Compensation Plan: Richard S. Morris, Michael B. Bracy, Virgil R. Cowart, Thomas W. Curry, David F. Mackie, Edward G. Najaiko, Jack B. Owens, Billy B. Ross and John B. Megahan.

Item 4. The Solicitation or Recommendation.

The Company believes that the previously reported distribution to its stockholders of the cumulative convertible preferred stock will be tax free except to the extent that cash, if any, is received in lieu of fractional shares. Certain dispositions and redemptions of the preferred stock may be subject to special rules contained in Section 306 of the Internal Revenue Code of 1954, as amended (the "Code"). In addition, the preferred stock will be

subject to certain provisions contained in Section 305 of the Code. In connection with the distribution of the preferred stock, the Company will furnish stockholders with additional information concerning the federal income tax consequences of holding and disposing of the preferred stock.

Item 9. Material to be filled as Exhibits.

Exhibit 7 -- Resolutions, adopted December 23, 1982, amending the Company's Deferred Compensation Plan.

Exhibit 8 -- Resolutions, adopted December 23, 1982, amending the Trust Agreement relating to the Company's Employee Stock Ownership Plan.

Exhibit 9 -- Resolutions, adopted December 23, 1982, amending the Trust Agreement relating to the Company's Employee Savings Plan.

Exhibit 10 -- Press Release issued on December 23, 1982.

Exhibit 11 -- Complaint, filed on December 23, 1982, by the Company against Burlington Northern and the Bidder in the United States District Court for the Western District of Texas.

Exhibit 12 -- Employment Agreement, dated December 24, 1982, between the Company and Richard S. Morris.

Exhibit 13 -- Employment Agreement, dated December 24, 1982, between the Company and Michael B. Bracy.

Exhibit 14 -- Press Release issued on December 25, 1982.

Exhibit 15 -- Form of Certificate of Adoption with respect to the Preferred Stock.

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this Statement is true, complete and correct.

Date: December 27, 1982

THE EL PASO COMPANY

By: /s/ R.S. Morris

Executive Vice President

THE WALL STREET JOURNAL

December 30, 1982

TWO EL PASO CO. AIDES GOT GOLDEN PARACHUTE' CONTRACTS LAST WEEK

Houston- El Paso Co. trying to fend off a hostile takeover by Burlington Northern Inc., has adopted an increasingly common tactic these days: handing its top executives so-called golden parachutes.

In a filing with the Securities and Exchange Commission, El Paso disclosed that it signed five-year contracts with two top executives that guarantee their current positions with El Paso at "not less that their current salary levels" for five years. The officers are executive vice president Richard S. Morris and senior vice president Michael B. Bracy.

According to the filing they would receive salary and benefits totaling about $465,000 annually after a change in control of the company, or if they determined that there was "a significant change" in their responsibilities or duties, a reduction in their total compensation or, for any other reason, they were "unable to exercise the authorities or duties" of their current posts. The golden parachutes would open even if the executives left the petroleum and chemicals holding company voluntarily.

El Paso's board authorized the contracts last Thursday, three days after Burlington Northern, a transportation and natural resources concern, its takeover attempt, the filing states.

A company spokesman said the executives needed the contracts to protect

them from an acquiring company's management changes because, unlike the other top officials at El Paso, the lack the years at the company needed to accumulate hefty retirement benefits. According to El Paso's March proxy materials, in 1981 Mr. Morris earned $269,674 in salary, fees and benefits while Mr. Bracy earned $195,455.

A golden parachute is a special employment agreement that in most cases, protects top executives with a lucrative severance package if control of the company changes. As a result of a flurry of mergers and acquisitions this year, about 30% of the nation's top companies have given golden parachute to top managers, according to recent studies.

Also last Thursday, El Paso's board changed a deferred compensation plan to

make about a dozen top executives covered by the plan eligible for additional retirement benefits if their responsibilities "have been diminished or curtailed." A company spokesman said he couldn't determine the amount of compensation provided under the change.

In a separate development, El Paso said their federal appeals court in Philadelphia will hear its appeal this morning of the denial of an extension of the Burlington Northern offer's proration period. A federal court in Delaware earlier this week ruled against El Paso's request for a 10-day extension of the period, which is scheduled to end at midnight.

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14D-9
SOLICITATION/RECOMMENDATION STATEMENT
PURSUANT TO SECTION 14(d)(4)
OF THE SECURITIES EXCHANGE ACT OF 1934

THE EL PASO COMPANY
(Name of Subject Company)

THE EL PASO COMPANY
(Name of Person(s) Filing Statement)

Common Stock, Par Value $3.00 per Share
(Title of Class of Securities)

283362 10 1
(CUSIP Number of Class of Securities)

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Secretary
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(Name, address and telephone number of person authorized to receive notice and communications on behalf of the person(s) filing statement)

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ITEM 1. Security and Subject Company.

The title of the class of equity securities to which this Statement relates is Common Stock, par value $3.00 per share ("Shares"), of The El Paso Company, a Delaware corporation (the "Company"). The address of the principal executive offices of the Company is 2727 Allen Parkway, Houston, Texas 77019.

ITEM 2. Tender Offer of the Bidder.

This Statement relates to the tender offer (the "Offer") of R-H Holdings Corporation (the "Bidder"), a Delaware corporation and a wholly-owned subsidiary of Burlington Northern Inc. ("Burlington Northern") a Delaware corporation, disclosed in a Tender Offer Statement on Schedule 14D-1 dated January 11, 1983 (the "Schedule 14D-1"), to purchase up to 21 million Shares for cash at $24

net per Share. The Schedule 14D-I states that the principal executive offices of the Bidder and Burlington Northern are located at 1111 Third Avenue, Seattle, Washington 98101.

ITEM 3. Identity and Background.

(a) The name and business address of the Company, which is the person filing this Statement, are set forth in Item 1 above.

(b) (1) Certain contracts, agreements, arrangements or understandings between the Company and certain of its directors and executive officers are described on pages 8 through 15 of the Company's Proxy Statement dated March 12, 1982 (the "Proxy Statement") for its Annual Meeting of Stockholders held on April 27, 1983, which pages are filed herewith as Exhibit 1 and incorporated herein by reference.

Pursuant to an agreement dated as of July 7, 1978, between the Company and Howard Boyd, a director and formerly the Chairman of the Board of the Company, Mr. Boyd is obligated to render services to the Company as an independent contractor until his death with respect to certain projects commenced during his tenure as an officer of the Company. In consideration for such services, the Company agreed to pay Mr. Boyd or his beneficiaries $60,000 per annum, adjusted for inflation, for so long as Mr. boyd or his then present spouse shall live. In addition, Howard Boyd has a deferred compensation agreement with the Company that provides for a monthly deferred compensation credit of $1,250, which began on May 1, 1969 and continued until the termination of his employment, plus 6 percent interest,

compounded monthly, on the unpaid balance of such credits. On June 1, 1979, Mr. Boyd retired as an executive of the Company and began receiving payments under both agreements. copies of the agreements with Mr. Boyd are filed herewith as Exhibit 2 and incorporated herein by reference.

On December 24, 1982, the Company entered into employment agreements with Richard S. Morris, Executive Vice President and a director, and Michael B. Bracy, Senior Vice President, providing for their continued employment with the Company in their current positions and at not less than their current salary levels for a period of five years. Such agreements provide that the employee shall remain entitled to benefits under such agreements if employment is terminated by him upon the occurrence of a

significant change in his responsibilities or duties or a reduction in his total compensation or as a result of a change of control of the Company and a change in circumstances thereafter significantly affecting his position, he is unable to exercise the authorities or duties attached to his position. Copies of such agreements are attached hereto as Exhibit 3 and are incorporated herein by reference.

On December 23, 1982, the Board of Directors amended the Company's Deferred Compensation Plan to provide that for the purposes of such Plan a participant shall be deemed to have retired at the instance of the Company if his duties as a director, officer or employee of the Company have be diminished or curtailed by the Company in any material respect. In addition to Mr. Petty, the following

executive officers of the Company were, at various times during May and November, 1982, designated as participants in the Company's Deferred Compensation Plan: Richard S. Morris, Michael B. Bracy, Virgil R. Cowart, Thomas W. Curry, William V. Holik, David F. Mackie, Edward G. Najaiko, Jack B. Owens, Billy B. Ross and John B. Megahan. Resolutions, adopted December 23, 1982, amending the Company's Deferred Compensation Plan, are attached hereto as Exhibit 4 and are incorporated herein by reference.

On January 7, 1983, the Company entered into employment agreements with David F. Mackie and Billy B. Ross, Senior Vice President and General Counsel and Senior Vice President and Controller of the Company respectively, which provide for their continued

employment with the Company in their current positions and at not less than their current salary levels for a period of three years. Copies of such agreements are attached hereto as Exhibit 5 and are incorporated herein by reference.

(2) On January 10, 1983 the Company, Burlington Northern and the Bidder entered into an agreement (the "Agreement") pursuant to which, among other things, (i) the Bidder terminated a tender offer for up to 25,100,000 Shares which it had commenced on December 21, 1982 (the "first Burlington Northern offer"), (ii) Burlington Northern has agreed to purchase, and the Company has agreed to sell, 4,166,667 Shares at $24 per Share, which represents an investment of $100 million in the Company, (iii) the Offer is being

made, (iv) certain arrangements were made concerning various procedural safeguards designed to protect the interests of the minority stockholders of the Company if a subsequent merger or similar transaction with Burlington Northern occurs, (v) the Company rescinded its December 23, 1982 authorization of a dividend of one share of $2.00 cumulative Convertible voting Preferred Stock, Series A for each 20 Shares, and an amendment to the Company's By-Laws relating to stockholder consents, (vi) all litigation between the parties relating to the first Burlington Northern offer was terminated, (vii) the number of directors constituting the Company's Board of Directors was increased to 14 and four designees of Burlington Northern -- Messrs. Richard M. Bressler, Thomas H. O'Leary, Richard C. Grayson

and John F. Greene -- were elected to the Company's Board of Directors; if and when Burlington Northern or the Bidder beneficially owns approximately 33% of the Shares, the Company's Board of Directors will be comprised of eight Burlington Northern representatives, Mr. Petty and four other directors to be designated by mutual agreement of Messrs. Bressler and Petty, and (viii) an option was granted by the Company to the Bidder to purchase, from time to time subject to certain conditions, up to 4,950,000 authorized but unissued Shares at $24 per Share. A copy of the Agreement and related Stock Purchase Agreement are attached hereto as Exhibit 6 and incorporated hereinby reference.

(3) Except as set forth above, to the best knowledge of the Company, there are no contracts, agreements, arrangements or understandings or any actual or

potential conflicts of interest between the Company or its affiliates, and (i) the Company, its executive officers, directors or affiliates or (ii) the Bidder, Burlington Northern or their respective executive officers, directors or affiliates.

ITEM 4. The Solicitation or Recommendation.

(a) At a meeting held on January 10, 1983, the Board of Directors of the Company approved the Agreement. The Board has concluded, under all the circumstances, given current market conditions and in view of the provisions of the Agreement, not to oppose the Offer. Stockholders who wish to receive $24 per Share for at least a portion of their Shares should tender to the Bidder. A copy of a press release and a

letter to stockholders concerning the Agreement and the Board's recommendation are attached hereto as Exhibits 7 and 8 and are incorporated herein by reference.

(b) In deciding to approve the Agreement the Board considered a number of factors, including, without limitation: (i) the experience, since the announcement of the first Burlington Northern offer, of management and the Company's financial advisor, in exploring and seeking to develop alternatives to the first Burlington Northern offer, including possible transactions involving the sale of the entire Company or certain of its assets and various expressions of interest previously received for third parties and (2) the following additional factors with respect to the Agreement: (i) the Offer

will permit all stockholder an ample opportunity to tender their Shares without the pressure of a short ten-day proration period, (ii) Burlington Northern's commitments with respect to the composition of the Company's Board of Directors and any subsequent merger proposal or similar transactions, and (iii) the significant capital infusion to be made by Burlington Northern which, in the Board's view, will substantially strengthen the Company's financial condition for the benefit of all stockholders.

ITEM 5. Persons Retained, Employed or to be Compensated.

On December 23, 1982, the Company entered into an agreement with Merrill Lynch White Weld Capital Markets Group ("Merrill Lynch") providing for the payment by the Company to Merrill Lynch

of compensation in connection with its services as financial advisor to the Company. A copy of the agreement is attached hereto as Exhibit 9. L. Emery Katzenbach, a director of the Company, is a Vice President of Merrill Lynch, Pierce, Fenner & Smith Incorporated of which Merrill Lynch is a division.

Neither the Company nor any person acting on its behalf currently intends to employ, retain or compensate any person to make solicitations or recommendations to stockholders in connection with the offer.

ITEM 6. Recent Transactions and Intent with Respect to Securities.

(a) To the best of the Company's knowledge, no transactions in the Shares have been effected during the past 60 days by the Company or by any executive officer, director, affiliate or subsidiary of the Company, except as follows:

(i) On December 3, 1982, Travis H. Petty, Chairman of the Board, President and Chief Executive Officer of the Company transferred 115 Shares as gifts to his children and grandchildren.

(ii) On December 13 and 16, 1982, Howard Boyd, a director of the Company, transferred 300 Shares as gifts to his children, and on December 22, 1982 he transferred 100 Shares as a gift to the John R. Hubbard Chair in British History at the University of Southern California.

(iii) On November 18, 1982, the mother of David F. Mackie, Senior Vice President of the Company, sold 800 Shares in the open market at $17 1/2 per Share. According to information filed with the Securities and Exchange Commissions, Mr. Mackie disclaims any beneficial interest in securities held by his mother.

(iv) During the past 60 days, the Trustees for Fund A of the Company's Employee Savings Plan and for the Company's Employees Stock Ownership Plan purchased in the aggregate 368,716 shares for the benefit of the participants in such plans. All of the executive officers of the Company (including three directors who are also executive officers of the Company) are participants in such plans. For further information with respect to such plans, see page 9 of the Proxy Statement.

(b) The Company understands that its directors currently expect to either sell or tender substantially all of their Shares in response to the Offer. Except as indicated in the preceding sentence, the Company has no knowledge whether its executive officers, affiliates or subsidiaries presently intend to

tender any shares in response to the Offer which are held of record of beneficially owned by such persons or entities.

ITEM 7. Negotiations and Transactions by the Subject Company.

(a) See Item 3(b).

(b) None.

ITEM 8. Additional Information to be furnished.

Not applicable.

ITEM 9. Material to be filed as Exhibits.

Exhibit 1 -- Copy of pages 8-15 of the Proxy Statement.

Exhibit 2 -- Agreements with Howard Boyd.

Exhibit 3 -- Employment Agreements with Messrs. Morris and Bracy.

Exhibit 4 -- Resolutions adopted December 23, 1982, amending the Company's Deferred Compensation Plan.

Exhibit 5 -- Employment Agreement with Messrs. Mackie and Ross.

Exhibit 6 -- The Agreement and the Stock Purchase Agreement.

Exhibit 7 -- Form of press release issued by the Company and Burlington Northern on January 10, 1983.

Exhibit 8 -- Form of letter dated January 11, 1983, being mailed to stockholders of the Company.

Exhibit 9 -- Agreement with Merrill Lynch White Weld Capital Markets Group dated December 23, 1982.

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this Statement is true, complete and correct.

Date: January 12, 1983

THE EL PASO COMPANY

By.....

Executive Vice President